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No. 06-

IN THE

Supreme Court of the United States

DOUGLAS B. MOYLAN, ATTORNEY GENERAL OF GUAM,
Petitioner,

v.

FELIX P. CAMACHO, GOVERNOR OF GUAM,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GUAM

PETITION FOR A WRIT OF CERTIORARI

SETH P. WAXMAN
Counsel of Record
Randolph D. Moss
Jonathan G. Cedarbaum
Monika L. Moore
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 663-6000

QUESTION PRESENTED

Whether the Supreme Court of Guam erred in interpreting the phrase "aggregate *tax* valuation" in the Guam Organic Act's debt-limitation provision, 48 U.S.C. § 1423a (emphasis added), as tying the limit on borrowing by the Guam territorial government to the full value of property on Guam rather than to the assessed value used for purposes of taxation.

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N.W. Halsey & Co. v. *City of Belle Plaine*, 104 N.W. 494 (Iowa 1905) 16

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Ngiraingas v. *Sanchez*, 495 U.S. 182 (1990) 5
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State ex rel. Douglas v. *Thone*, 286 N.W.2d 249 (Neb. 1979) 24
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11 Guam Code Ann. § 24102 ..... 6, 15
11 Guam Code Ann. § 24306 ..... 6, 8
11 Guam Code Ann. § 24401 6
H.R. Rep. No. 81-682 (1949) 19
S. Rep. No. 81-2109 (1950) 5
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48 U.S.C. § 1422 5
48 U.S.C. § 1423a ..... *passim*
48 U.S.C. § 1424-2 (2000) 2
Organic Act of Virgin Islands, 48 U.S.C. § 1392 *et seq.*
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48 U.S.C. § 1403 18
48 U.S.C. § 1574 18
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Hearing Before the House Appropriations Interior Subcommittee, 107th Cong. (May 2, 2001) 22

OTHER AUTHORITIES

Barbel, Marion, *Loan Deal Struck to Bail Puerto Rico Out of Financial Crisis*, Global Insight, May 11, 2006 ..... 21, 22
Captain, W. Nicholas, *Property Information: A Guam Case Study*, Real Estate Issues, Winter 2003 7
Cataldo, Adam L., *Puerto Rico OKs Up to $350M in Spending Cuts*, The Bond Buyer, May 30, 2006 22
CIA, *The World Factbook*, *available at* https://www.cia.gov/cia/publications/factbook/geos/vq.html (last visited July 18, 2006) 22

TABLE OF AUTHORITIES—Continued

Page(s)

Fields, Tim, *PFA OKs bonds to refinance debt, add library and roads*, Virgin Islands Daily News, June 8, 2006, *available at* http://www.virginislandsdailynews.com/index.pl/article?id=17591799 (last visited July 18, 2006) 23

House Panel Votes To Create CFO For Virgin Islands, Nat'l J. Cong. Daily, July 14, 2004 23

15 McQuillin, *The Law of Municipal Corporations* (3d ed. 2005) 19

Puerto Rico: Trouble on "Welfare Island", The Hamilton Spectator, May 27, 2006, *available at* http://www.hamiltonspectator.com/NASApp/cs/ContentServer?pagename=hamilton/Layout/Article_Type1&c=Article&cid=1148681735320&call_pageid=1024322466723 (last visited July 18, 2006) 21

Rivera, Manuel Ernesto, *Deal to end Puerto Rico shutdown hangs on approval of bailout legislation*, Associated Press, May 13, 2006 21

Virgin Islands Fiscal Recovery Task Force, *5 Year Plan for Fiscal Recovery*, *available at* http://64.233.161.104/search?q=cache:GGOxrJcgpeQJ:www.usvi.org/oit/5yrplan/part%2520i%2520-%2520section%2520i_general%2520fund_pages%2520i-1%2520through%2520i-40.htm+&hl=en&gl=us&ct=clnk&cd=1 (last visited July 18, 2006) 22

Virgin Islands governor seeks new loans to pay off old debts, Associated Press, Sept. 15, 1997 22

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FELIX P. CAMACHO, GOVERNOR OF GUAM,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GUAM

OPINIONS BELOW

The decision of the Supreme Court of Guam (Pet. App. 1a-35a) is unreported, but is available at 2003 WL 21697180. The order of the Court of Appeals for the Ninth Circuit, which at the time possessed jurisdiction to review decisions of the Guam Supreme Court, granting petitioner's petition for a writ of certiorari (Pet. App. 37a) is unreported. The Court of Appeals' order dismissing the case for lack of jurisdiction in light of Congress's shifting of certiorari jurisdiction over decisions of the Guam Supreme Court to this Court (Pet. App. 39a) is unreported.

JURISDICTION

Because this petition seeks review of a decision of the Supreme Court of Guam, this Court has jurisdiction pursuant to 28 U.S.C. § 1257 and 48 U.S.C. § 1424-2 (as amended in 2004). Pet. App. 48a.

The decision of the Guam Supreme Court was issued on July 23, 2003. This petition is nonetheless timely because, at the time of the Guam Supreme Court's decision, the Court of

Appeals for the Ninth Circuit, not this Court, possessed exclusive jurisdiction to review decisions of the Guam Supreme Court, *see* 48 U.S.C. § 1424-2 (2000); *White* v. *Klitzkie*, 281 F.3d 920, 925 (9th Cir. 2002), and petitioner filed a timely petition for certiorari with the Ninth Circuit, which was granted. On October 30, 2004, after the Court of Appeals had granted certiorari and the appeal had been briefed and argued, Congress amended 48 U.S.C. § 1424-2 to shift certiorari jurisdiction over decisions of the Guam Supreme Court from the Ninth Circuit to this Court. But the Ninth Circuit only concluded that the amendment applied to pending cases in January 2006, *see Santos* v. *People of Guam*, 436 F.3d 1051 (9th Cir. 2006), and only dismissed the appeal in this case for lack of jurisdiction on that ground on March 6, 2006. Petitioner promptly filed a timely request for extension of time within which to file a petition for certiorari with this Court on May 24, 2006, which Justice Kennedy granted on May 31.

Although this Court has held that the 90-day time limit for filing certiorari petitions established in 28 U.S.C. § 2101(c) is "mandatory and jurisdictional," *Missouri* v. *Jenkins*, 495 U.S. 33, 45 (1990), it has recognized that the start of the 90-day period is tolled if the petitioner files a timely petition for rehearing with the court below, the court below decides to grant an untimely rehearing petition, or the court below directs the parties to address whether rehearing should be ordered because each of these acts "raise[s] the question whether the court will modify the judgment and alter the parties' rights," *Hibbs* v. *Winn*, 542 U.S. 88, 97 (2004). Here, petitioner's timely filing of a certiorari petition with the Court of Appeals, the Court of Appeals' grant of certiorari to review the Guam Supreme Court's decision, and the Court of Appeals' retention of the appeal after the amendment of 48 U.S.C. § 1424-2 on October 30, 2004 had the same effect of "'suspend[ing] the finality of the [Guam Supreme Court's] judgment, pending [the Court of Appeals'] further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties.'" *Jenkins*, 495 U.S. at 46 (quoting *Department of*

Banking v. *Pink*, 317 U.S. 264, 266 (1942)). Thus, petitioner's filing of a certiorari petition with the Court of Appeals and the Court of Appeals' granting of the petition should be treated as having the same effect that the filing of a petition for rehearing has on a decision of a Court of Appeals, namely of "suspend[ing]" the underlying judgment now sought to be reviewed. *Jenkins*, 495 U.S. at 46; *cf. Leishman* v. *Associated Wholesale Elec. Co.*, 318 U.S. 203, 205-206 (1943); *Pink*, 317 U.S. at 266. While the Court of Appeals, having properly granted certiorari, considered the case, "there [was] no 'judgment' to be reviewed" by this Court, *Jenkins*, 495 U.S. at 46, and the 90-day period established by 28 U.S.C. § 2101(c) should be considered to have been tolled.[1]

STATUTORY PROVISIONS INVOLVED

Section 11 of the Organic Act of Guam states in pertinent part:

> [t]axes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and *when necessary to anticipate taxes and revenues*,

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[1] A further consideration supporting a finding that this petition is timely is the presumption recognized by this Court that Congress intends decisions of territorial courts to be subject to review by at least one Article III court. In *Territory of Guam* v. *Olsen*, 431 U.S. 195 (1977), this Court noted that "Congress has consistently provided for appellate review by Art. III courts of decisions of local courts of the Territories. What history there is points to a purpose to create a similar system for Guam." *Id.* at 203-204. Without a "clear signal," *id.* at 203, that Congress intended to permit elimination of review of the Guam courts by any Article III court, this Court was "unwilling to say that Congress made an extraordinary exception in the case of Guam," *id.* at 204. Moreover, the Court noted, "we should hesitate to attribute such a purpose to Congress since a construction that denied Guam litigants access to Art. III courts for appellate review of local-court decisions might present constitutional questions." *Id.*

> bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the *aggregate tax valuation* of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

48 U.S.C. § 1423a (first and third emphases added).

Other relevant statutory provisions are set forth in the appendix to this petition. Pet. App. 41a-65a.

INTRODUCTION AND STATEMENT

This is a case about maintaining respect for Congressional limitations on territorial governments and ensuring that those governments remain accountable to their own U.S. citizen electorates as well. The case concerns the provision in the Organic Act of Guam, the federal statute that serves as the territory's constitution, which caps the amount of debt the government of Guam can assume in order to prevent government insolvency and to protect the territory's residents from oppressive taxation. Petitioner, the Attorney General of Guam, acting pursuant to his statutory duty to review all government contracts for legality, has refused to approve bond issues authorized by the territorial legislature and respondent Governor that would push the territory's indebtedness above the limit prescribed by Congress in the Organic Act. In a decision that validated the excessive levels of borrowing sought by respondent, the Supreme Court of Guam misinterpreted the debt-limitation provision in contravention of both its text and undisputed purpose. Absent review by this Court, no Article III court will address this important federal question that not only will shape Guam's fiscal future but may also influence the financial health of other territorial governments, which operate under similar federally mandated debt ceilings.

1. Guam, an island of approximately 200 square miles located in the west central Pacific Ocean, is an unincorporated territory of the United States. Acquired in the Spanish-American War, the island was administered by the Navy from 1898 to 1950. *See Ngiraingas* v. *Sanchez*, 495 U.S. 182, 186 (1990). In 1950, Congress enacted the Organic Act of Guam, 48 U.S.C. § 1421 *et seq.*, which serves as Guam's constitution, *see* 48 U.S.C. § 1423a; *Haeuser* v. *Department of Law*, 97 F.3d 1152, 1156 (9th Cir. 1996). The Organic Act defines the structure and powers of Guam's territorial government and guarantees the people of Guam, who are U.S. citizens, the fundamental individual rights enshrined in the Bill of Rights. The Organic Act is designed to secure for the people of Guam the benefits of a democratically accountable local government constrained by the rule of law. *See* S. Rep. No. 81-2109, at 1-2 (1950).

The Governor of Guam is popularly elected to a four-year term. 48 U.S.C. § 1422. The Attorney General of Guam, the territory's chief legal officer, 48 U.S.C. § 1421g(d)(1); 5 Guam Code Ann. § 3102, is also directly elected to a four-year term, 48 U.S.C. § 1421g(d)(2); 5 Guam Code Ann. § 30101(a), and, unlike other executive officials, may not be removed from office by the Governor, 48 U.S.C. §§ 1422, 1421g(d)(2); 5 Guam Code Ann. § 30101 (a), (c). Guam law provides that the Governor may not execute any contracts on behalf of the territorial government without the Attorney General's approval of their legality. 5 Guam Code Ann. § 22601.

Section 11 of the Organic Act empowers the Guam Legislature to enact laws on "all rightful subjects of legislation" not inconsistent with the Organic Act or other federal laws applicable to Guam. 48 U.S.C. § 1423a. It then immediately limits the Guam Legislature's authority in one crucial respect: excessive borrowing. Section 11 specifically mandates that

> [t]axes and assessments on property, internal revenues, sales, license fees and royalties for franchises, privileges, and concessions may be imposed for

> purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and *when necessary to anticipate taxes and revenues*, bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the *aggregate tax valuation* of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

48 U.S.C. § 1423a (first and third emphases added).

While Congress strictly limited the amount of debt the territorial government can assume by linking the government's power to incur debt to its power to tax, Congress left the Guam Legislature free to design the details of the territory's taxation system. Consequently, subject to the federal requirement of uniformity, local laws determine what types of property in Guam are taxed and at what rates of assessment. In crafting the local tax structure, the Guam Legislature has opted to exempt certain types of real property from taxation, including government land, land used for educational or religious purposes, and land used in active farming. 11 Guam Code Ann. § 24401. Property is required to be appraised at its full market value, *id.* § 24102(f), and the Department of Revenue and Taxation is required to appraise the taxable property on the island every three years, *id.* § 24306. The assessed or taxable value of real property subject to taxation is set at 35% of its full, appraised value. *Id.* § 24102(f).

2. a. From the early 1990s until recently, Guam's economy suffered a dramatic downturn. The territory's economy has long been driven principally by tourism (especially from Japan) and U.S. military spending. In the early 1990s, the Japanese stock and real estate markets experienced massive declines, which significantly decreased Japanese investment

and tourism in Guam. Military spending in Guam also declined around this time. A series of other, unrelated events—a major earthquake in 1993, two supertyphoons in 1997 and 2002, the 1997 Asian economic crisis, the SARS epidemic, and the September 11, 2001 terrorist attacks—also contributed to the weakening of Guam's economy. In combination, these events have caused a substantial decline in the value of real property on Guam since the early 1990s. One study, for example, calculates that the value of real property on Guam depreciated an average of 81% between 1990 and 2002. *See* W. Nicholas Captain, *Property Information: A Guam Case Study*, Real Estate Issues, Winter 2003, at 18.

b. In 2003, the Guam Legislature concluded that the territorial government had insufficient revenue in its General Fund to pay certain obligations. Pet. App. 2a. (*In re Request of Governor Felix P. Camacho Relative to the Interpretation and Application of Section 11 of the Organic Act of Guam*, 2003 WL 21697180 (Guam July 23, 2003), attached at Pet. App. 1a-35a.). On April 28, 2003, the Legislature passed Public Law 27-19, which authorized the Governor to issue bonds in an amount not to exceed $418,309,857. Pet. App. 2a. The law earmarked $218,309,857 of the borrowing for General Fund expenditures, including tax refunds, utility payments to the Guam Power Authority, retirement fund payments, withholding payments, general fund vendor payables, and public school repairs. *Id.*; 5 Guam Code Ann. § 1512(a), (m). The law specified that the remaining $200 million in borrowed funds were to be used to pay the debt service on bonds issued a decade earlier. Pet. App. 2a.

Before the Governor could enter into any contracts to issue bonds pursuant to Public Law 27-19, he was required to obtain approval of the contracts' legality from petitioner Attorney General. 5 Guam Code Ann. § 22601. On May 14, 2003, petitioner sent a letter to the Governor and the Speaker of the Legislature indicating that he would not approve any contract to issue bonds pursuant to Public Law

27-19. Pet. App. 3a. Petitioner determined that the borrowing would be illegal on two grounds.

First, the new borrowing would bring the territorial government's indebtedness above the level permitted by the debt-limitation proviso in Section 11 of the Organic Act. Petitioner Attorney General explained that the phrase "aggregate tax valuation" in the proviso should be understood to refer to the assessed value of property used for purposes of taxation (which at present is fixed by law at 35% of appraised value) rather than the full, appraised value. Petitioner's view accorded with the position adopted several years earlier by the Legislative Counsel, the Legislature's own internal legal adviser. Pet. App. 8a; 2 Guam Code Ann. § 1112 (providing for Legislative Counsel).

Second, even if the Legislature were to rely on appraised value, petitioner opined, it was improper for the Legislature to use the 2002 tax roll to determine that value. Guam law requires a reappraisal of property values every three years, *see* 11 Guam Code Ann. § 24306, but the government had not carried out an appraisal since 1993, *see* Pet. App. 3a. Petitioner acknowledged that the territory's Board of Equalization had made some adjustments to the tax rolls in each of the intervening years, but he noted that property values had declined significantly since 1993 because of the island's major economic downturn and that the 2002 tax roll did not fully reflect this depreciation.

After a further exchange of letters, the Legislature responded on June 25, 2003 by enacting Public Law 27-21, which did two things intended to validate after the fact the borrowing authorized by Public 27-19. Pet. App. 3a. First, Public Law 27-21 expressed the Legislature's view that the phrase "aggregate tax valuation" in the Organic Act's debt-limitation provision should be understood to mean "one hundred percent (100%) of the appraised value of the property on Guam." *Id.* Second, it provided that when the territorial government fails to conduct the triennial appraisals otherwise required by law, the "last completed" appraisal, regardless of how old, "as supplemented by the annual adjust-

ments" by the Board of Equalization shall be the appraisal used for purposes of taxation. Pet. App. 9a. Because the Legislature's expression of its view concerning the meaning of the Organic Act had no legal significance, *see id.* at 10a, Petitioner continued to refuse to give his approval to any contracts needed to undertake the borrowing authorized under Public Law 27-19.

3. On July 1, 2003, the Governor filed an original declaratory judgment action in the Supreme Court of Guam pursuant to 7 Guam Code Ann. § 4104, which permits the Governor to seek a binding determination of a question of law affecting the operation of the executive branch that is "a matter of great public interest [when] the normal process of law would cause undue delay." *See also In re Request of Governor Carl T.C. Gutierrez, Relative to the Organicity and Constitutionality of Public Law 26-35*, 2002 WL 187459 (Guam Feb. 7, 2002). The members of the supreme court are appointed by the Governor with the advice and consent of the Legislature and serve ten-year terms. 7 Guam Code Ann. §§ 3103(a), 6101(a). The Governor asked the supreme court to determine whether the borrowing authorized by Public Law 27-19 violated the Organic Act's debt-limitation provision and whether the use of a tax roll unmoored to a recent appraisal as a means of calculating the debt limit was permissible. On the same day that the Governor filed the action, the supreme court invited petitioner to intervene.

The next day, July 2, the court held a "status hearing" at which petitioner contended that determining the propriety of reliance on the 2002 tax roll would require factfinding that the court did not appear to be in a position to undertake. The court declined to establish a procedure for factfinding and established an expedited briefing schedule. The parties were required to file their opening briefs in five days, on July 7, their opposition briefs the next day, and their reply briefs the day after that at 10:00 a.m. The court heard oral argument on July 9, the day after receiving reply briefs.

The supreme court issued its decision on July 23. It concluded that the bonds authorized under Public Law 27-19 did not violate the Organic Act's debt-limitation provision. Pet. App. 2a. The court interpreted the phrase "aggregate tax valuation" in the Organic Act's debt-limitation proviso as referring to full, appraised value rather than the assessed value used for purposes of taxation. The court took the view that "tax valuation" must mean "appraised value" because "all taxes on property must necessarily be based, in the first instance, upon appraised values of the property," *id.* at 14a, though it had to acknowledge elsewhere in the opinion that tax-exempt as well as taxable property was valued in the appraisal process, *id.* at 34a. The court also considered particularly significant the fact that the debt-limitation provision in the Virgin Islands Organic Act used the phrase "aggregate assessed valuation" rather than "aggregate tax valuation." *Id.* at 12a. The court reasoned that if Congress had intended to refer to assessed value in the Guam Organic Act, it would have used the word "assessed" rather than "tax." *Id.*

The court then considered the meaning of the term "property" in the Guam debt-limitation provision. Pet. App. 15a-19a. Having rejected the importance of the link between taxing capacity and the debt limit in interpreting the phrase "aggregate tax valuation," the court now relied on just that consideration in rejecting respondent Governor's position that "property" could include property that is exempt from taxation. *Id.* at 18a-19a. It would be unwise to calculate the debt limit based on non-taxed property, the court explained, because this property does not generate tax revenue. *Id.* The court acknowledged that its reasoning in interpreting the word "property" might be thought to be inconsistent with its analysis of the meaning of the phrase "aggregate tax valuation." *Id.* at 18a n.9.

The court next concluded that the government could use the 2002 tax roll to calculate the current debt limit, even though the government had not conducted the triennial appraisals mandated by Guam law to create the tax roll. Pet.

App. 19a-26a. The court acknowledged that the territorial legislature's post-hoc effort in Public Law 27-21 to relax the triennial appraisal requirement by allowing reliance on tax rolls could have only prospective effect and so could not be used to support the legality of borrowing authorized before its enactment. *Id.* at 21a-22a. But the court nonetheless held that reliance on the 2002 tax roll was proper. The court determined that Guam law mandates triennial appraisals only for purposes of taxation, not for purposes of calculating the debt limit. *Id.* at 22a. The court placed the burden on petitioner to demonstrate that the system used to calculate the values in the tax roll through individual adjustments to the 1993 appraisal levels was arbitrary or capricious and found that petitioner had failed to carry that burden in the one week he had been given to present materials to the court. *Id.* at 25a-26a.

Finally, the court applied its interpretation of the meaning of the debt-limitation proviso to the particular facts of the 2003 borrowing bill and Guam's existing debts. According to the 2002 tax roll, the court found, the total appraised value of taxable property on Guam was $11.1493 billion. Pet. App. 34a. That meant the debt cap stood at $1.11493 billion. *Id.* The court found that the territorial government's existing "public indebtedness" was $378 million. *Id.* On this view, adding the $418,309,857 of debt authorized by Public Law 27-19 would bring the territory's debt to just below $800 million, well within the court's understanding of the cap's level. *Id.* at 34a-35a.

Relying on the figures from the 2002 tax roll, petitioner's interpretation of the debt-limitation proviso would have meant a debt cap of $390.3 million, 35 percent of the $1.11493 billion ceiling calculated by the court. Thus, accepting the court's determination of existing public indebtedness at $378 million, some of the very first bonds issued under authorization in Public Law 27-19 would have pushed the territorial government's indebtedness above the congressionally mandated limit.

4. Petitioner promptly sought review of the Guam Supreme Court's decision before the Court of Appeals for the Ninth Circuit, which at the time possessed jurisdiction to review Guam Supreme Court decisions by writ of certiorari pursuant to 48 U.S.C. § 1424-2 (2000) (Pet. App.47a-48a). The Ninth Circuit granted the petition. *Id.* at 37a. In addition to questioning the Guam Supreme Court's definition of "aggregate tax valuation" in the Organic Act's debt-limitation provision, petitioner challenged the expedited process used by the Guam Supreme Court and its resort to factfinding. The parties submitted full briefing, and the court heard oral argument on May 24, 2004.

On October 30, 2004, Congress amended 48 U.S.C. § 1424-2, shifting certiorari jurisdiction over decisions of the Supreme Court of Guam from the Ninth Circuit to this Court. Act of Oct. 30, 2004, Pub. L. No. 108-378, § 2, 118 Stat. 2206, 2208. On March 6, 2006, the Ninth Circuit dismissed the appeal for lack of jurisdiction on the ground that Congress's removal of the Ninth Circuit's certiorari jurisdiction over the Guam Supreme Court applied to pending appeals. Pet. App. 39a.

5. On May 24, 2006, petitioner requested an extension of time within which to file a petition for certiorari with this Court, which Justice Kennedy granted on May 31, setting the deadline for filing this petition as July 19.

REASONS FOR GRANTING THE PETITION

Petitioner seeks review because the Guam Supreme Court misinterpreted an important provision of federal law—the debt-limitation proviso in the Guam Organic Act—in a way that authorizes levels of public borrowing that may threaten the solvency of the Guam government. The Guam Organic Act limits Guam's "public indebtedness" to "10 per centum of the aggregate tax valuation of the property in Guam." 48 U.S.C. § 1423a (emphasis added). The Guam Supreme Court's equation of "tax valuation" with appraised value, *i.e.*, actual market value, rather than assessed value, defies the debt-limitation provision's plain terms by reading

the word "tax" out of the provision and undermines the provision's purpose, which, as the federal District Court of Guam has explained, is "to benefit the taxpayer by restraining the government's propensity to incur debts and to saddle future generations of taxpayers with those debts." *Guam Tel. Auth.* v. *Rivera*, 416 F. Supp. 283, 287 (D. Guam 1976).

Review by this Court is particularly warranted for three reasons. First, because the question presented concerns one of the core powers of a territorial government—its ability to borrow—and the effectiveness of a limitation on that power established by Congress, the question is of great public importance. *See Territory of Alaska* v. *American Can Co.*, 358 U.S. 224, 225 (1959) (petition "granted in view of the fiscal importance of the question to [the territory of] Alaska"); *Puerto Rico* v. *Rubert Hermanos, Inc.*, 309 U.S. 543, 544 (1940) ("The question here in controversy is a matter of great importance to Puerto Rico and involves the power of its legislature to enforce Congressional policies affecting the Island. We therefore brought the case here on a writ of certiorari."). Second, while the resolution of the question will directly affect only the powers of the Guam government, the question is not one of merely local concern. The problem of fiscal crises brought on by excessive borrowing is one that has regularly afflicted other territorial governments. Third, absent review by this Court the important federal question presented will not be addressed by any Article III court, and indeed will have been resolved by the territorial supreme court without even the benefit of significant guiding precedents from any Article III courts. *Cf. Territory of Guam* v. *Olsen*, 431 U.S. 195, 201-202, 204 (1977) (expressing reluctance to interpret Guam Organic Act in way that would permit elimination of review of territorial court decisions by at least one Article III court and suggesting that such elimination would raise constitutional concerns).

I. THE GUAM SUPREME COURT'S DECISION UNDERMINES A CONGRESSIONALLY MANDATED RESTRICTION ON THE POWERS OF THE GUAM GOVERNMENT

The Guam Supreme Court's interpretation of the Organic Act's debt-limitation provision ignores its plain language and disregards its central purposes of keeping territorial government spending and taxation in line and of ensuring that the territorial legislature and respondent governor remain democratically accountable for their fiscal policy decisions.

A. The Guam Supreme Court's Interpretation Conflicts with the Wording of the Guam Organic Act

Interpretation of the debt-limitation provision must of course begin with the words of the provision themselves. *See, e.g., Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). The Guam Organic Act authorizes the Guam Legislature to issue bonds and other obligations "when necessary to anticipate taxes and revenues ... *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam." 48 U.S.C. § 1423a. By interpreting "aggregate tax valuation" to mean appraised value, that is, full market value, the Guam Supreme Court read the crucial modifier "tax" out of the debt-limitation provision and so violated the well-established canon that wherever possible, courts must "construe a statute to give every word some operative effect." *Cooper Indus., Inc.* v. *Aviall Servs., Inc.*, 543 U.S. 157, 167 (2004).

If Congress had intended to set the debt ceiling with reference to the full value of all property on Guam, it could simply have said "aggregate valuation." Instead, it included the qualifier "tax," with the evident purpose of tying the level of permissible indebtedness to the valuation of property used for purposes of taxation, that is, the assessed value. *Cf. Duncan* v. *Walker*, 533 U.S. 167, 169, 174-175 (2001) (holding that a statute referring to "State post-conviction or other collateral review" did not apply to federal habeas corpus review because reading the statute oth-

erwise would render the modifying term "State" insignificant and thus fail to fulfill the Court's duty "to give effect, if possible, to every clause and word of a statute"). In most jurisdictions, as Congress would certainly have been aware, the value of property for purposes of taxation is set considerably below the full or appraised value. *See, e.g.*, Ga. Code Ann. § 48-5-7(a) (providing "taxable tangible property shall be assessed at 40 percent of its fair market value"); *Breslow* v. *School Dist.*, 182 A.2d 501, 504 (Pa. 1962) ("It is a matter of common knowledge that in nearly every township, county and city in Pennsylvania, property is assessed for tax purposes lower than its market value."). That pattern was predictably followed in Guam. *See* 11 Guam Code Ann. § 24102(f) (defining "value" of real property for purposes of taxation as 35% of appraised value). Linking the permissible level of public indebtedness to the value of property used for imposing taxes has the clear effect of keeping the territorial government's borrowing in line with its ability to repay the debt through tax revenues.

The Guam Supreme Court's error is thrown into relief by state supreme court decisions interpreting debt-limitation provisions lacking a qualifier such as "tax" or "assessed" before the word "value" or "valuation." In construing these unqualified debt-limitation clauses, state high courts have consistently taken the absence of a qualifying adjective as a clear indication that full appraised value rather than assessed value was intended. In *Board of Education* v. *Passey*, 246 P.2d 1078 (Utah 1952), for example, the Utah Supreme Court had to interpret a constitutional debt ceiling that limited municipal borrowing to four percent of "the value of the taxable property" in the municipality. The defendant school board clerk refused to sign bonds issued by the board, claiming that doing so would violate the constitutional restriction because the amount of the bond issue exceeded four percent of the assessed value of the property in the municipality. The Utah Supreme Court rejected the clerk's view, reasoning that in the constitutional debt cap "[t]he word 'value' is not limited or qualified by any adjectives. It does not read 'assessed value' or specify any other

particular kind of value. The word 'value' standing by itself can have only one meaning, *viz.* the full worth or actual value—not a fractional share thereof." *Id.* at 1079. Other courts have followed the same sensible logic. *See Hansen* v. *City of Hoquiam*, 163 P. 391, 392 (Wash. 1917); *N.W. Halsey & Co.* v. *City of Belle Plaine*, 104 N.W. 494, 495-497 (Iowa 1905). Just as the absence of a qualifier before "valuation" indicates legislative intent to tie a debt restriction to full, that is, appraised, value, the presence of a qualifier such as "tax" (or "assessed") shows a legislative intent that the debt limit be tied to the typically lower assessed value used for purposes of taxation.

The Guam Supreme Court suggested that it was not ignoring the significance of the word "tax" altogether because, in its view, that term could be understood to limit the types of property upon whose value the debt limit was to be calculated to taxable property. *See* Pet. App. 17a-19a. But if Congress had intended the word "tax" (or rather "taxable") to qualify the meaning of "property" rather than defining the kind of valuation from which the debt limitation must be calculated, it could easily have made its intention clear by placing "taxable" before "property" rather than "tax" before "valuation." The use of the term "taxable property" in that way is common enough in state constitutional debt caps, *see, e.g.*, Ga. Const. of 1983, art. IX, § V, ¶ I(a) ("The debt incurred by any . . . political subdivision of this state . . . shall never exceed 10 percent of the assessed value of all taxable property within such . . . subdivision . . . ."); Wyo. Const. of 1889, art. 16, § 5 (same), and the same term appears in the debt-limitation provision in the Virgin Islands Organic Act, which, as the Guam Supreme Court stressed, was enacted by Congress just the year before the Guam Organic Act, *see* Pet. App. 12a. The Guam Supreme Court offered no explanation (or legislative history evidence) for the roundabout locution its interpretation would attribute to the Guam Organic Act's drafters.

The link between the Guam Organic Act's debt limitation provision and valuation of property for purposes of

taxation is drawn not only by the presence of the word "tax" immediately before the word "valuation," but also by the introductory phrase allowing borrowing only "when necessary to anticipate taxes and revenues." 48 U.S.C. § 1423a. That phrase emphasizes that borrowing by the Guam Legislature is permissible only when the Legislature determines that the debt incurred can be paid off from existing or reasonably anticipatable sources of tax revenue. *See, e.g.*, *Hodges* v. *Crowley*, 57 N.E. 889, 892 (Ill. 1900); *cf. Wein* v. *State*, 347 N.E.2d 586, 591 (N.Y. 1976). If public indebtedness must be paid off from tax revenue, it only makes sense that the level of indebtedness should be tied to the level of taxation imposed on property, not to the value of the property itself. The establishment of that link is precisely what the debt-limitation proviso's reference to "aggregate tax valuation" accomplishes.

The Guam Supreme Court refused to interpret the qualifier "tax" as setting Guam's public borrowing ceiling with reference to the assessed value of property on Guam in significant part because the debt-limitation provision in the Virgin Islands' Organic Act includes the word "assessed" rather than "tax" before "valuation." *See* Pet. App. 12a. The Virgin Islands' provision was enacted just a year before Guam's, and the court reasoned that Congress would not have used the word "assessed" in one organic act and "tax" in the other if it had intended both terms to mean "assessed." *Id.* As the decisions by state supreme courts interpreting unqualified debt-limitation provisions suggest, the presence of either qualifier, whether "tax" or "assessed," is more significant than the particular qualifier chosen, in demonstrating that the legislature intended to restrict borrowing by tying it to the valuation of property used for purposes of taxation rather than full or appraised value. But, in any event, the Guam Supreme Court's comparison of the Guam and Virgin Islands provisions ignores the evolution of the Virgin Islands Organic Act. Once that evolution is taken into account, Congress' use of different qualifiers in the two organic acts only demonstrates their equivalence, not their divergence.

In 1949 Congress amended the Virgin Islands Organic Act to authorize the Virgin Islands government, for certain purposes, to issue bonds "*Provided*, That no public indebtedness . . . shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in . . . the Virgin Islands." 48 U.S.C. § 1403; *see id.* § 1574(b)(ii)(A). But unlike the Guam Act, the Virgin Islands Organic Act, which was originally enacted in 1936, contained from the start a separate provision mandating that "all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property." 48 U.S.C. § 1401a; *see Bluebeard's Castle, Inc.* v. *Government of the V.I.*, 321 F.3d 394, 396 (3d Cir. 2003).[2] Because of this separate federal requirement, if the debt-limitation provision added to the Virgin Islands Act in 1949 had defined the limitation with reference to "aggregate tax valuation," that might well have been understood to mean actual value. Thus, in the Virgin Islands Act, it was necessary for Congress to insert the word "assessed" before "valuation" in the debt-limitation proviso in order to make clear that the debt ceiling was tied to the assessed value of property, not its full, appraised value.[3] When Congress enacted the Guam Or-

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[2] The provision states that "[f]or the calendar year 1936 and for all succeeding years all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property and the rate in each municipality of such islands shall be the same for all real property subject to taxation in such municipality whether or not such property is in cultivation and regardless of the use to which such property is put." 48 U.S.C. § 1401a. Congress established this requirement because prior to this time land in the Virgin Islands had been appraised for tax purposes at different rates based on the particular use of the land. *Bluebeard's Castle*, 321 F.3d at 401. Uncultivated land in particular had been taxed at a low rate, thus creating a disincentive to development of much land on the islands. *Id.*

[3] Indeed, the bill containing the Virgin Islands debt-limitation provision had originally used the phrase "aggregate tax valuation." The House committee that considered the bill amended the phrase to use the word "assessed" in response to a recommendation from the Department of the Interior. But the change was characterized as simply a "perfecting

ganic Act the following year, there was no similar need to use the word "assessed." The adjective "tax" could be used to achieve the same result.

B. The Guam Supreme Court's Interpretation Undermines the Purpose of the Debt-Limitation Provision

The Guam Supreme Court's interpretation flies in the face not only of the debt ceiling's terms but also of its core purpose: to keep borrowing by the Guam Legislature within limits tied to the legislators' willingness to impose taxes on the people who elect them. By fixing that link in Guam's federal constitution, the debt-limitation proviso ensures that the Legislature cannot engage in levels of borrowing that would threaten the territorial government's solvency. It prevents the Legislature from excessively postponing the enactment of taxes needed to keep the government within its means and thus throwing onto the backs of future taxpayers oppressive levels of taxation. And, perhaps most fundamentally, the debt-limitation proviso thereby ensures that the members of the Legislature (and the Governor) remain accountable to people who elect them and whom they serve.

In all these respects, the Guam Organic Act's borrowing cap resembles its state constitutional counterparts. As state supreme courts have repeatedly held, those state constitutional limitations, like the Guam proviso, are intended "to prevent the creation of excessive municipal debt and to protect taxpayers from the consequent oppression of burdensome, if not ruinous, taxation." *City of Hartford* v. *Kirley*, 493 N.W.2d 45, 51 (Wis. 1992); *see* 15 McQuillin, *The Law of Municipal Corporations* § 41:1 (3d ed. 2005) (constitutional debt limits established "as a limit to taxation and as a protection to taxpayers; to maintain municipal solvency") (footnote omitted). They serve "to prevent municipalities from

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amendment," *i.e.*, one not designed to change the statute's intended meaning. H.R. Rep. No. 81-682, at 2, 3 (1949).

loading the future with obligations to pay for things the present desires, but cannot justly afford, and, in short, to establish the principle that, beyond defined limits, they must pay as they go." *Keller* v. *City of Scranton*, 49 A. 781, 782 (Pa. 1901); *see City of Hartford*, 493 N.W.2d at 51 ("seeks to impose the burden of debt repayment upon those who create the obligations, not upon future generations"); 15 McQuillin, §41:3 (same). They aim to restrain "the lust of a greedy and overindulgent . . . government." *Allen* v. *Van Buren Township*, 184 N.E.2d 25, 31 (Ind. 1962).

Aware of these holdings, the Guam Supreme Court at least acknowledged the debt-limitation proviso's purpose of keeping excessive borrowing in check. *See* Pet. App. 6a-7a. But it went on to disregard that fundamental purpose in reaching its view of the proviso's meaning. The Guam Supreme Court's interpretation leaves the territorial Legislature free to engage in much greater borrowing—with the present assessment rate of 35%, nearly three times as much borrowing—as would the interpretation urged by petitioner. And the Guam Supreme Court's reading leaves the level of borrowing untethered to the Legislature's willingness to impose taxes on voters. It is telling in this regard that when the Legislature, apparently displeased with petitioner's unwillingness to approve the excessive borrowing authorized by Public Law 27-19, sought to validate that borrowing, it enacted in effect an advisory law expressing its view that the phrase "aggregate tax valuation" in the debt-limitation should be interpreted to mean 100% of appraised value. *See id.* at 3a. The Legislature could have achieved the intended result of raising the debt ceiling by raising the assessment rate for property taxation from 35% to some higher figure. But doing so would have required taking responsibility with voters for subjecting a greater portion of their property to taxation. In evading acceptance of that responsibility, the Legislature was engaging in just the sort of behavior the debt ceiling was intended to prevent.

The purpose of the debt-limitation proviso, in short, is "to place restraints upon the Governor and Legislature [in

order to] promote fiscal responsibility." *Guam Tel. Auth.*, 416 F. Supp. at 287. To the extent the terms of the proviso are ambiguous, they should be read to serve that core Congressional goal. Instead, the Guam Supreme Court's decision subverts it.

C. The Importance of the Debt-Limitation Proviso's Purpose of Promoting Fiscal Restraint Is Highlighted by the Experience of Other Territories

Guam is one of three U.S. territories with federal organic acts, along with Puerto Rico and the Virgin Islands. Recent fiscal crises experienced by the governments of Guam's fellow territories highlight both the more general significance of territorial debt-limitation provisions and the importance of interpreting such provisions in accord with their central purpose of restraining excessive borrowing.

The Puerto Rican government endured a fiscal crisis when it hit a borrowing limit at the beginning of the year. *See, e.g., Puerto Rico: Trouble on "Welfare Island"*, The Hamilton Spectator, May 27, 2006.[4] On May 1, 2006, the governor shut down nonessential government operations for two weeks, furloughing 90,000 public employees, after failing to reach agreement with the legislature on how to fund a $740 million budget deficit. The government only resumed operations when it secured a $741 million emergency loan from the Government Development Bank to be repaid by some combination of a new sales tax and existing revenues. *See, e.g.*, Marion Barbel, *Loan Deal Struck to Bail Puerto Rico Out of Financial Crisis*, Global Insight, May 11, 2006. In the wake of the government shutdown, Moody's cut the rating of $25 billion in Puerto Rico general obligation bonds to one level above junk status. *See* Manuel Ernesto Rivera, *Deal to end Puerto Rico shutdown hangs on approval of bailout legislation*, Associated Press, May 13, 2006.

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[4] *Available at* http://www.hamiltonspectator.com/NASApp/cs/ContentServer?pagename=hamilton/Layout/Article_Type1&c=Article&cid=1148681735320&call_pageid=1024322466723 (last visited July 18, 2006).

A compromise fiscal reform bill was signed into law in mid-May that calls for cutting up to $350 million in government spending in 2007. Negotiations are under way to overhaul the tax system to bring in an additional $300 to $400 million in revenues. *See* Adam L. Cataldo, *Puerto Rico OKs Up to $350M in Spending Cuts*, The Bond Buyer, May 30, 2006, at 1. The emergency loan and fiscal reform bill, however, may "not address the structural deficiencies at the root of the budget impasse." *Loan Deal Struck to Bail Puerto Rico Out of Financial Crisis, supra.*

The Virgin Islands has also struggled to keep its borrowing within legal bounds. In 1999, the Virgin Islands Fiscal Recovery Task Force warned that if the territorial government did not change its ways, its annual deficit could soon reach over $140 million. *See* Virgin Islands Fiscal Recovery Task Force, *5 Year Plan for Fiscal Recovery*, Pt. 1, § I.A.[5] The Task Force predicted that the island's debt would balloon from $300 million at the end of that fiscal year to $700 million by the 2004 fiscal year. *Id.* In fact, by 2004 the island's debt had reached $1 billion, more than 60% of the Islands' gross domestic product. *See House Panel Votes To Create CFO For Virgin Islands*, Nat'l J. Cong. Daily, July 14, 2004; CIA, *The World Factbook*.[6]

One of the territorial government's responses to this financial crisis was to try to borrow more money. In 1997, then-governor Roy Schneider sought permission to borrow $105 million to fund tax rebates owed to thousands of Virgin Islands residents. *See Virgin Islands governor seeks new loans to pay off old debts*, Associated Press, Sept. 15, 1997. In 1999, the territorial government sought amendments to its organic act that would permit it to issue an additional

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[5] *Available at* http://64.233.161.104/search?q=cache:GGOxrJcgpeQJ:www.usvi.org/oit/5yrplan/part%2520i%2520-%2520section%2520i_general%2520fund_pages%2520i-1%2520through%2520i-40.htm+&hl=en&gl=us&ct=clnk&cd=1 (last visited July 18, 2006).

[6] *Available at* https://www.cia.gov/cia/publications/factbook/geos/vq.html (last visited July 18, 2006).

$130 million in tax-exempt bonds, assuring Congress that the government would pursue reforms that would balance the budget by 2003. *Hearing Before the S. Comm. On Energy & Natural Res.*, 106th Cong. (Oct. 14, 1999) (statement of Ferdinand Aranza, Dir. of the Office of Insular Affairs, Dep't of the Interior). From 1999 to 2001, the government borrowed another $300 million from private lenders to refinance the deficit. *Hearing Before the H. Appropriations Interior Subcom.*, 107th Cong. (May 2, 2001) (statement of the Hon. Donna M. Christensen). In 2001, it requested that $45 million in outstanding FEMA disaster relief loans be forgiven, again assuring Congress that the deficit would soon be a thing of the past. *Id.*

The Virgin Islands territorial government has recently taken some steps—raising taxes, imposing a hiring freeze, encouraging private economic development, and making the island a more attractive tourist destination—that appear to have succeeded in bringing its budget back into balance. But pressure for additional borrowing may well emerge again soon. *See, e.g.*, Tim Fields, *PFA OKs bonds to refinance debt, add library and roads*, Virgin Islands Daily News, June 8, 2006.[7]

II. THIS CASE PRESENTS A CASE OR CONTROVERSY WITHIN THE MEANING OF ARTICLE III

Although petitioner and respondent are both officials in the Guam Government, this case presents a case or controversy within the meaning of Article III of the Constitution because it is "the kind of controversy courts traditionally resolve," and the setting assures "that concrete adverseness which sharpens the presentation of issues." *United States* v. *Nixon*, 418 U.S. 683, 697 (1974).

Even in cases involving the federal executive branch, this Court has repeatedly taken the view that the "mere assertion of a claim of an 'intrabranch dispute,' without more,

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[7] *Available at* http://www.virginislandsdailynews.com/index.pl/article?id=17591799 (last visited July 18, 2006).

has never operated to defeat federal jurisdiction." *Nixon*, 418 U.S. at 693. Article III courts "must look behind names that symbolize the parties to determine whether a justiciable case or controversy is presented." *United States* v. *ICC*, 337 U.S. 426, 430 (1949). Those principles apply with even greater force where, as here, each party is independently elected to his office, *see* 5 Guam Code Ann. § 30101(a), petitioner Attorney General may not be removed from office by respondent Governor, *see* 48 U.S.C. § 1421g(d)(2); 5 Guam Code Ann. § 30101(c), and local law gives each official an independent, and thus potentially conflicting, authority over a matter of great public significance, the approval of government contracts, including for public borrowing, *see* 5 Guam Code Ann. § 22601.

This dispute is the kind of controversy courts traditionally resolve. Federal courts, including this Court, have, with some regularity, heard cases in which executive agencies or officials have appeared on opposite sides of the dispute. *See, e.g.*, *IRS* v. *FLRA*, 494 U.S. 922 (1990); *Secretary of Agric.* v. *United States*, 347 U.S. 645 (1954); *TVA* v. *EPA*, 278 F.3d 1184, 1193-1195 (11th Cir. 2002), *cert. denied sub. nom. Leavitt* v. *TVA*, 541 U.S. 1030 (2004) (collecting decisions). They have done so particularly when, as here, the executive official challenging the position of the chief executive was insulated from removal by the chief executive. *See TVA*, 278 F.3d at 1193-1194 (collecting decisions). And state courts have regularly considered suits pitting attorneys general against other executive officials, including governors, justiciable when the contending officials disagreed over the constitutionality of state laws. *See, e.g.*, *People ex rel. Salazar* v. *Davidson*, 79 P.3d 1221, 1227-1231 (Colo. 2003) (attorney general versus secretary of state); *State ex rel. Condon* v. *Hodges*, 562 S.E.2d 623, 626-629 (S.C. 2002) (attorney general versus governor); *State ex rel. Douglas* v. *Thone*, 286 N.W.2d 249, 254-256 (Neb. 1979) (attorney general versus governor). The Guam Organic Act, a federal enactment, is the equivalent of the Territory's constitution. *See* 48 U.S.C. § 1423a; *Haeuser*, 97 F.3d at 1156.

This case is marked by concrete adverseness because the independently elected petitioner Attorney General and respondent Governor "advocate genuinely conflicting views" regarding the interpretation of the Guam Organic Act's borrowing-limitation provision, *TVA*, 278 F.3d at 1197, and local law gives them the authority to endow those conflicting views with concrete effects by making the issuance of government contracts contingent on the approval of both officials, *see* 5 Guam Code Ann. § 22601. Thus, since petitioner argues that federal law precludes respondent from issuing the authorized bonds, and respondent insists no such impediment exists, "valuable legal rights ... will be directly affected to a specific and substantial degree by the decision of the question of law." *Nashville, Chattanooga & St. Louis Ry.* v. *Wallace*, 288 U.S. 249, 262 (1933).[8]

[8] Moreover, even if it were not clear that Article III was satisfied when the dispute began, the binding effect of the Guam Supreme Court's decision constrains petitioner's exercise of his statutory obligation to review bond issuance contracts for legality and thus makes all the clearer the concreteness of the dispute presented to this Court. *See Asarco* v. *Kadish*, 490 U.S. 605, 612-624 (1989) (Article III determination turns on state of dispute at time of petition to this Court, including effect of lower court decision on parties, not on state of dispute at some earlier time).

CONCLUSION

This case presents an important (and rare) opportunity for this Court to ensure that the limitations Congress has imposed on a territorial government are correctly understood and carefully observed. Doing so will promote both the fiscal stability of Guam and the accountability of its government to the U.S. citizens it serves.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

SETH P. WAXMAN
Counsel of Record
Randolph D. Moss
Jonathan G. Cedarbaum
Monika L. Moore
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 663-6000

JULY 2006

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF THE TERRITORY OF GUAM

No. CRQ03-001

IN RE REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

Governor Felix P. Camacho, *Petitioner.*
Douglas B. Moylan, Office of the Attorney General, *Party In Interest.*

Argued and Submitted on July 9, 2003
Filed July 23, 2003

[2003 WL 21697180]

Before F. PHILIP CARBULLIDO, Chief Justice, BENJAMIN J.F. CRUZ and RICHARD H. BENSON, Justices Pro Tempore

OPINION

CARBULLIDO, C.J.

[1] The Governor of Guam, Felix P. Camacho ("Governor"), filed a Request for Declaratory Judgment pursuant to Title 7 GCA § 4104 requesting that this court determine whether the issuance of bonds authorized by Public Law 27-19 ("P.L. 27-19") would violate Section 11 of the Organic Act of Guam, (codified at 48 U.S.C. § 1423a) ("Section 11"), which limits public indebtedness to 10% of the aggregate tax valuation of the property on Guam. Related to that determination, the Governor asks the court to interpret the phrase "aggregate tax valuation of the property on Guam" as used in Section 11, and to provide guidance on how the government is to ascertain the "aggregate tax valuation" when determining whether the debt limitation has been ex-

ceeded. We find that the allowable public indebtedness under Section 11 is to be ascertained with reference to the appraised value of the property on Guam, as reflected on the certified tax roll in effect at the time the debt is incurred. We further find that the 2002 tax roll was the product of a fair and reasonable valuation system, and thus can be used to determine the current debt limit. From these findings, and considering the government's current outstanding public indebtedness, we conclude that the issuance of the bonds authorized by P.L. 27-19 would not violate the debt-limitation clause contained in Section 11 of the Organic Act.

I.

Public Law 27-19, enacted on April 28, 2003, was proposed upon the Legislature's finding that "the current revenues available in the General Fund [are] ... insufficient to pay certain obligations of the General Fund and that a mechanism is needed to provide necessary cash to the General Fund to pay such obligations...." *See* Guam Pub. L. 27-19, § 1 (Apr. 28, 2003). P.L. 27-19 authorizes the Governor of Guam to issue new bonds of up to $418,309,857 for that purpose without further legislative approval.[1] Of that amount, $218,309,857 may be used to pay income tax refunds, utility payments to the Guam Power Authority, retirement fund payments, withholding tax payments, general fund vendor payables, and public school repairs.[2] The remaining $200 million may be used to "fund an escrow to pay debt service on all or a portion of the Government of Guam General Obligation Bonds, 1993 Series A at matched maturity." Guam Pub. L. 27-19, § 2 (Apr. 28, 2003). Pursuant to the authority granted by P.L. 27-19, the Governor intends to facilitate the issuance of approximately $393 million in bonds.

Under Title 5 GCA § 22601, government contracts may be entered into only upon execution of the Governor, "after

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[1] The law also authorizes the issuance of an additional $50 million of bonds only upon further approval of the Legislature.

[2] Guam Pub. L. 27-19, § 2 (Apr. 28, 2003).

approval of the Attorney General." Title 5 GCA § 22601 (1996). The Attorney General, Douglas B. Moylan ("AG"), in a letter to the Governor and Speaker of the 27th Guam Legislature, Vicente C. Pangelinan, dated May 14, 2003, indicated his refusal to sign any contract for the issuance of the bonds claiming that the issuance of the bonds would violate the debt-limitation provision of Section 11 of the Organic Act of Guam. Req. Decl. J., Exhibit A (AG Letter). The AG's conclusion was based on his opinion that the government's maximum debt limit allowed under Section 11 is to be based on the assessed value of property on Guam, and that, in any event, the current tax list could not be used to determine the debt limit because it is inaccurate due to the fact that the valuation of property on Guam, required to be performed every three years under 11 GCA § 24306, was last conducted in 1993.

[2] Presumably in response to the AG's concerns, on June 25, 2003, the Governor signed into law Public Law 27-21 ("P.L. 27-21"), which amends sections of the real property tax law in two regards. First, Title 11 GCA § 24306 was amended to provide that if the triennial property valuations in Guam are not conducted by the tax assessor as required under that section, "then the *last completed* valuation as supplemented by the annual adjustments provided for in § 24307 shall be the property tax valuation used under the Chapter." Guam Pub. L. 27-21 § 1 (June 25, 2003). Second, the law added subsection (1) to Title 11 GCA § 24102, to provide that the "aggregate tax valuation" under Section 11 of the Organic Act was to be "certified as being one hundred percent (100%) of the appraised value of the property on Guam based on the *last completed* valuation conducted pursuant to [Title 11 GCA] § 24306, as supplemented by the annual adjustments provided for in § 24307." Guam Pub. L. 27-21, § 2 (June 25, 2003).

On July 1, 2003, the Governor filed the instant Request for Declaratory Judgment in this court. The court thereafter permitted the Attorney General to intervene in the proceeding.

II.

This court has jurisdiction to issue declaratory judgments upon the request of the Governor under Title 7 GCA § 4104. *See* Title 7 GCA § 4104 (as amended by P.L. 24-61 Sept. 17, 1997). Our authority extends to providing "the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide" or answering "any question affecting the powers and duties of the Governor and the operation of the Executive Branch...." *Id.* We find that the Governor's Request satisfies the jurisdictional standards set forth in Title 7 GCA § 4104. The issues presented require an interpretation of local and federal law, and relate to the Governor's ability to lawfully execute bonds allowed by the Legislature under P.L. 27-19, as necessary to manage the executive branch.

III.

A. Issues

The Governor seeks a declaratory judgment on the following three questions:

> (1) Whether the public indebtedness of Guam, after the contemplated issuance of bonds authorized by [P.L.] 27-19, will be within 10% of the aggregate tax valuation of the property in Guam, the maximum permitted by Section 11 of the Organic Act of Guam; and
>
> (2) Whether "aggregate tax valuation of the property on Guam" as that phrase is used in Section 11 of the Organic Act of Guam means one hundred percent (100%) of the appraised value of the taxable property on Guam; and
>
> (3) Whether even if one or more of the triennial valuations required by 11 GCA § 24306 has not been conducted, the Government may conclusively presume that the "aggregate tax valuation of the property in Guam" as used in Section 11 of the Organic Act of Guam is not less than the aggregate ap-

praised value ascertained by the Director of the Department of Revenue and Taxation ("DRT"), as assessor, pursuant to the last completed valuation conducted pursuant to 11 GCA § 24306 as supplemented by the annual adjustments provided for in 11 GCA § 24307.

[3] Req. Decl. J., p. 4 (July 1, 2003). The answers to these questions require a determination of the following issues: (1) the meaning of the terms "aggregate tax valuation," "property," and "indebtedness" in Section 11 of the Organic Act; (2) the sufficiency of the 2002 tax roll in determining the current debt limit; and (3) Guam's current level of indebtedness based on the interpretation of the relevant terms in Section 11 with reference to the 2002 tax roll.

B. Standard of Review

This case is brought pursuant to our original, rather than appellate, jurisdiction; thus, all issues are determined herein in the first instance. *See In re Request of Governor Carl T.C. Gutierrez*, 2002 Guam 1, ¶ 8. The questions presented for the court's determination require the interpretation of federal and local statues applicable to Guam. The interpretation of these statutes is a legal question within this court's authority to decide. *See Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 26 ("Federal court decisions do not prevent this court from determining the correct interpretation of provisions of the Organic Act, Guam's constitution."), *aff'd by Gutierrez v. Pangelinan*, 276 F.3d 539 (9th Cir. 2002); *Government of Guam v. 221 Slot Machines*, 2002 Guam 22, ¶ 4 ("Issues of statutory interpretation are questions of law that are reviewed de novo.") (citation and internal brackets omitted).

C. Discussion

The primary issue presented to the court is whether the issuance of one or more series of bonds in the aggregate amount not to exceed $418,309,857, as allowed by P.L. 27-19, would violate Section 11 of the Organic Act.

1. Section 11 Debt-Limitation Provision

Section 11 of the Organic Act contains a statutory limitation upon government borrowing, commonly referred to as a debt-limitation provision. *See* 15 McQuillin, *The Law Of Municipal Corporations* § 41.01 (3d ed. 1949).[3] Section 11 provides in relevant part:

> Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: *Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam.* Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.
>
> 48 U.S.C.A. § 1423a (emphasis added).

The purposes of the debt-limitation provision in Section 11 have never been articulated by this court. However, it is widely recognized that debt-limitation provisions "serve as a limit to taxation and as a protection to taxpayers; to maintain ... solvency, both governmental and proprietary; and to keep [local] ... residents from abusing their credit, and to protect them from oppressive taxation." 15 McQuillin, *supra*, § 41.01 (footnotes omitted); *see also* Tracy Nicholas

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[3] Most states and local municipalities have constitutional or statutory limitations on borrowing. *See* 15 McQuillin, *supra*, § 41.01 ("A majority of the states have constitutional or statutory limitations upon borrowing by local governments."); *Guam Telephone Authority v. Rivera*, 416 F. Supp. 283, 285 (D. Guam 1976) ("Section 11 is similar to sections included in the Constitutions of most states.").

Eddy, *The Referendum Requirement: A Constitutional Limitation on Local Government Debt in Florida*, 38 U. Miami L. Rev. 677, 679 (1984) ("The primary objectives of the debt restrictions are preventing corruption, discouraging extravagance, and promoting sound fiscal policy for local governments."); *see also City of Hartford v. Kirley*, 493 N.W.2d 45, 51 (Wis. 1992) ("Article XI, sec. 3(2), is intended to prevent the creation of excessive municipal debt and to protect taxpayers from the consequent oppression of burdensome, if not ruinous, taxation."). Furthermore, their purpose is to "prevent the current legislature from binding a future legislature, and to prevent legislators from making future taxpayers pay today's bills." 15 McQuillin, *supra*, § 41.01; *Keller v. City of Scranton*, 49 A. 781, 782 (Pa. 1901) ("The constitutional provision i[s] intended ... to prevent municipalities from loading the future with obligations to pay for things the present desires, but cannot justly afford, and, in short, to establish the principle that, beyond the defined limits, they must pay as they go."); *see also City of Hartford*, 493 N.W.2d at 51 ("It seeks to impose the burden of debt repayment upon those who create the obligations, not upon future generations.").

2. "Aggregate Tax Valuation of the Property in Guam"

[4] Under Section 11, the public indebtedness of Guam cannot exceed "10 per centum of the *aggregate tax valuation* of the property in Guam." 48 U.S.C.A. § 1423a (emphasis added). The phrase "aggregate tax valuation" is not defined in the Organic Act.

The Governor argues that the phrase "aggregate tax valuation" means the *appraised value*, as distinguished from *assessed value*, of the property on Guam. By contrast, the Attorney General argues that the term "valuation" in Section 11 is the same as the term "value" in local statutes governing Guam real property taxes, Chapter 24 of Division 2, Title 11 GCA. Under 11 GCA § 24102, the term "value" is defined as "thirty-five per cent (35%) of the appraised value...." Title 11 GCA § 24102(f) (1996). "Appraised value"

is defined in the same section as "the amount at which property would be taken in payment of a just debt from a solvent debtor." *Id.*

a. Barrett-Anderson v. Crisostomo.

Only one local court has defined the phrase "aggregate tax valuation" found in the Organic Act. *See Barrett-Anderson v. Crisostomo*, CV0651-89 (Super. Ct. Guam Nov. 21, 1989). In *Barrett-Anderson*, GEDA authorized the issue of limited obligation infrastructure improvement bonds and water system revenue bonds. *Id.* at p. 1. The then-legislative counsel issued a memo opining that the issuance of the bonds would violate the debt-limitation provision contained in Section 11 of the Organic Act. *Id.* at p. 2. His opinion was based on his conclusion that the term "aggregate tax valuation of the property in Guam," as used in Section 11, referred to the assessed value of taxable property, and not the appraised or market value of the property. Then Superior Court Judge Janet Healy Weeks disagreed.[4] She concluded, instead, that the phrase "aggregate tax valuation" means the "appraised value of the taxable property on Guam." *Id.* at p. 14. In reaching this conclusion, Justice Weeks started with the principle that the interpretation of a statute should be gleaned from the legislative intent. *Id.* at p. 12. She found that because the concept of "assessed value" as used in relation to the assessment of property taxes was made part of local law after the enactment of Section 11, and because these later-enacted local statutes governing real property tax assessments did not employ the same language as that used in Section 11 or otherwise reference the debt limitation in Section 11, those statutes, which premise tax assessments on 35% of the appraised value of taxable property, could not logically be used in interpreting Section 11 of the Organic Act. Moreover, Justice Weeks found that using the assessed value as the base to calculate

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[4] Judge Weeks was subsequently appointed Associate Justice of the Guam Supreme Court. She has since retired.

the debt limit would "set Guam's debt-ceiling at a far lower level then those municipalities that have proportionately greater property tax bases." *Id.* at p. 13. She concluded that "[t]here is no indication that Congress, in enacting the Organic Act, sought to stifle economic growth on Guam by setting the debt ceiling restrictively low." *Id.*

b. Public Law 27-21 § 2.

[5] Public Law 27-21 § 2, enacted on June 25, 2003, added a new subsection (1) to Title 11 GCA § 24102 to define the phrase "aggregate tax valuation" in Section 11 as "one hundred percent (100%) of the appraised value of the property on Guam," thus codifying Justice Weeks' holding in *Barrett-Anderson*. Guam Pub. L. 27-21 § 2 (June 25, 2003). This legislative determination, however, is not controlling on this court's interpretation of the phrase as used in Section 11. The Guam Legislature cannot, through legislation, redefine the provisions of the Organic Act. *See* 15 McQuillin, *supra*, § 41.05 ("[W]ith respect to territories, debt limits may be prescribed by act of Congress."). "[A] constitutional debt-limitation provision is self-executing and the legislature cannot authorize a municipality to incur a greater debt than that fixed by the constitution."[5] 15 McQuillin, *supra*, § 41.05. Thus, the Organic Act limits the legislature's power with regard to government indebtedness. *See Breslow v. School District*, 182 A.2d 501, 504-05 (Pa. 1962) (holding that a stat-

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[5] While the Organic Act is a federal statute, it is, for all intents and purposes here, the equivalent of a constitution. *See Haeuser v. Dep't of Law*, 97 F.3d 1152, 1156 (9th Cir. 1996) ("The Organic Act serves the function of a constitution for Guam."). This is underscored by the well-established principle in this jurisdiction that the Guam Legislature cannot enact laws which are in derogation of the provisions of the Organic Act. 48 U.S.C.A. § 1423a ("The legislative power of Guam shall extend to all rightful subjects of legislation of [local application] *not inconsistent with this chapter* and the law of the United States applicable to Guam.") (emphasis added); *see In re Request of Governor*, 2002 Guam 1, ¶ 36 ("[T]he legislature may not enact a law encroaching upon the Governor's authority and powers which are mandated by the Organic Act.") (citation omitted).

ute which defined the term "assessed value" in the constitution's debt-limit provision to mean market value was unconstitutional because it contradicted the plain language of the constitution requiring the debt limit to be based on assessed value); *see also City Water Supply Co. v. City of Ottumwa*, 120 F. 309, 314 (S.D. Iowa 1903) (stating that the constitutional debt-limitation provision could not be circumvented by statute upon consent of the voters because if that were so, "then we have no use for the constitution"); *cf. City of Hartford*, 493 N.W.2d at 50 ("Notwithstanding the legislature's recital that TIF bonds do not constitute a debt within the meaning of the constitution, the court must examine the substance of the obligations to ascertain their effect under art. XI, sec. 3. The legislature's characterization of the bonds is not controlling on this court's determination of the constitutional issue."). The problem inherent in allowing the legislature to define the terms of the Organic Act is plain: "all that any Legislature would have to do, in order to circumvent the Constitution is to pass an Act defining or redefining any term or any language used in the Constitution to suit its purpose or objective." *Breslow*, 182 A.2d at 505. Such circumvention through local legislation would nullify the debt-limitation provision which Congress imposed. *Id.* at 504-05 (concluding that the legislature cannot pass statutes which "attempt to circumvent the Constitution and double or triple the borrowing capacity of municipalities").

Finally, we are mindful that our interpretation of Section 11 must be guided by the rules of interpretation and precedent. The court may not "permit a distortion of principles and time-honored precedents merely to satisfy the lust of a greedy and overindulgent, benevolent government...." *Allen v. Van Buren Township of Madison County*, 184 N.E.2d 25, 31 (Ind. 1962).

[6] "In cases involving statutory construction, the plain language of a statute must be the starting point." *See Aguon v. Gutierrez*, 2002 Guam 14, ¶ 6 (citations omitted). "[O]ur duty is to interpret statutes in light of their terms and legislative intent." *Carlson v. Guam Tel. Auth.*, 2002

Guam 15, ¶ 46 n.7; *see also In re Request of Gutierrez*, 2002 Guam 1, ¶ 17 ("When interpreting a statute, the court's task is to determine the intent of the legislature and give the statute meaning without altering or amending the statute's scope."). "Undefined terms in a statute are generally ascribed their common ordinary meaning." *Carlson*, 2002 Guam 15 at ¶ 34. "Moreover, in determining legislative intent, a statute should be read as a whole," and therefore, we are to "construe each section in conjunction with other sections." *Sumitomo v. Gov't of Guam*, 2001 Guam 23, 11 ¶ 17; *Gutierrez v. Ada*, 528 U.S. 250, 255, (2000) ("[W]ords and people are known by their companions."). "[T]he language of the statute cannot be read in isolation, and must be examined within its context.... A statute's context includes looking at other provisions of the same statute and other related statutes." *Aguon*, 2002 Guam 14 at ¶ 9. Finally, "questions of statutory interpretation may be aided by reference to the prevailing interpretation of other statutes that share the same language and either have the same general purpose or deal with the same general subject as the statute under consideration." *Aguon*, 2002 Guam 14 at ¶ 11 (citation omitted).

After reviewing the language of Section 11, we disagree with the AG's contention that *valuation* in Section 11 be interpreted as value under Title 11 GCA § 24102(f).[6] First, the two phrases are different; the term *value* is distinct from the term *valuation*. *See Barrett-Anderson*, CV0651-89, pp. 12-13. Second, the definition in the local statute cannot reasonably be viewed as the definition Congress intended for the phrase "tax valuation" in Section 11 because the two statutes were enacted by completely different legislative bodies, and, moreover, as acknowledged by Justice Weeks in *Barrett-Anderson v. Crisostomo*, Section 11 was enacted prior to 11 GCA § 24102(f). *See Barrett-Anderson*, CV0651-

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[6] As indicated earlier, *value* is defined as "thirty-five (35%) of the appraised value; *appraised value* means the amount at which property would be taken in payment of a just debt from a solvent debtor." 11 GCA § 24102(f) (emphasis added).

89, pp. 12-13; *Slaven v. BP America, Inc.*, 973 F.2d 1468, 1475 (9th Cir. 1992) (determining that actions by a later legislature have little relevance in interpreting a prior legislature's actions). Finally, and most importantly, the plain language of Section 11 does not support the AG's argument that the assessed value of property should be used to calculate Guam's debt limit.

Reference to the Organic Act of the Virgin Islands underscores this point. The debt-limitation provision in the Organic Act of the Virgin Islands, codified at 48 U.S.C. § 1403, was enacted by the same Congress which enacted Section 11. The Virgin Island's provision was enacted a mere 10 months prior to the enactment of Section 11. Title 48 U.S.C. § 1403 provides that "no public indebtedness of the government of the Virgin Islands shall be incurred in excess of 10 per centum of the *aggregate assessed valuation* of the taxable real property in the islands." 48 U.S.C.A. § 1403 (emphasis added). Congress provided that the governmental debt of the Virgin Islands be determined by the *assessed* valuation of the taxable property. In contrast, the same Congress in enacting the Organic Act of Guam did not provide that the debt limit of the government of Guam be based on the *assessed* values of the property on Guam. 48 U.S.C.A. § 1423a. Rather, the debt limit under Section 11 is to be determined by the *tax valuation* of the property on Guam. *Id.* This difference in the statutory language demonstrates that under the plain language of Section 11, the debt limit is not to be based on the *assessed* valuation of property.

[7] In fact, in other jurisdictions where courts have interpreted their debt-limitation provisions as requiring the limit to be based on assessed values, their constitutional debt limitation provisions specifically provided that assessed values be used. *See e.g. Breslow*, 182 A.2d at 503-05 (invalidating as unconstitutional a local law which redefined the term "assessed value" to mean "market value" for purposes of the debt-limitation provision where the Constitution provided that "[t]he debt of any ... school district ... shall never exceed seven (7) per centum upon the *assessed value of the*

taxable property....") (citation omitted) (emphasis added); *Allen*, 184 N.E.2d at 29 (holding that because, under the constitutional language, the "value of taxable property" was to be ascertained "by the last *assessment*," the debt limitation was to be based on the assessed value) (citing Article 13, § 1 of the Indiana Constitution which provided that "[n]o political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two percent of the value of the taxable property within such corporation, to be ascertained by the last *assessment* for State and county taxes, previous to the incurring of such indebtedness"); *Phelps v. City of Minneapolis*, 219 N.W. 872, 873-74 (Minn. 1928) (holding that the debt limit was to be based on the assessed, as opposed to actual, value of the taxable property in light of the constitutional language limiting the net indebtedness of the city to 10% "of the last *assessed* value of all taxable property therein") (emphasis added); *City of Chicago v. Fishburn*, 59 N.E. 791, 792-93 (Ill. 1901) (determining that the constitutional provision limiting the debt limit to 5% of the value of taxable property as of the last assessment referred to the *assessed* value and not actual value, especially in light of the common understanding that the term "assessment, in connection with taxation" means "an official valuation of property for the purpose of fixing the proportion of taxes which each one shall pay," and the commonly known fact that "property was not assessed at full value"); *Baisden v. City of Greenville*, 111 So. 2, 4-5 (Ala. 1927) (holding that the constitutional debt-limitation provision which limited the municipality's indebtedness to a fixed percent of "the *assessed* value of the property therein," means "the assessed value of the property as fixed for state taxation") (internal quotations omitted) (emphasis added).

Viewing Section 11, there is simply no requirement that the debt limit be based on *assessed* values. Had Congress wished to limit Guam's indebtedness to a percentage of assessed values, it could have included that language in Section 11 as they did with the Virgin Islands, and as was done by the framers of the constitutions of several states.

[8] The debt limit under Section 11 is to be based on the "tax valuation" of property. 48 U.S.C.A. § 1423a. We interpret the phrase "tax valuation" to mean the appraised value of property on Guam, and not the assessed value, because all taxes on property must necessarily be based, in the first instance, upon appraised values of the property. *See* 11 GCA § 24102(f) (defining value for purposes of tax levies as "thirty-five percent (35%) of the *appraised value*") (emphasis added); *Hansen v. City of Hoquiam*, 163 P. 391, 392 (Wash. 1917) (recognizing that while a state statute required that property be assessed at a rate not exceeding 50% of actual value, because this assessment rate *was necessarily based on the actual value*, then logically in every assessment the appraised value of the property was ascertained). Moreover, there is nothing in the Organic Act limiting the levy of property taxes to a certain percentage of actual or market value. Thus, it cannot be presumed that Congress meant to restrict the debt limit to a particular assessment rate to be determined by the local legislature. The better reading of the phrase "tax valuation" is the value which Congress contemplated the taxes would be based, which, considering the absence of a limitation regarding assessment rates, could only rationally be the appraised market value of the property.

Further, our interpretation is consistent with the maximum power to tax granted by Congress. Congress granted the local legislature the power to tax property. 48 U.S.C.A. § 1423a. Congress also intended that the government of Guam be able to incur "debt" in the constitutional sense. Any bonds or other obligations which are not issued upon the pledge of governmental taxes and revenues are not "debt" in the constitutional sense, and are thus not generally subject to a constitutional debt-limitation provision. *City of Hartford*, 493 N.W.2d at 51 n.13, debt in a constitutional sense "must be an undertaking enforceable by the creditor *against the municipality or its assets*) (citation omitted and emphasis added). Because Section 11 contains a limitation on "indebtedness," Congress clearly granted the government the authority to incur "debt," that is, the power to in-

cur obligations payable out of the general revenues of the government. The power to incur "debt" is clearly tied to the power to tax, because in incurring debt, the government pledges its credit, *i.e.*, its taxing power. *See id.* at 55-56. Thus, the limitation on incurring debt in Section 11 must be interpreted consistently with the power to tax. Because Congress did not impose an assessment rate in the Organic Act, Congress clearly granted the legislature the power to impose taxes on the full market value of property. We thus can only interpret the debt limitation in Section 11 consistently with the maximum grant of power to tax allowed by Congress. It follows that the congressionally imposed limitation on government indebtedness under Section 11 is based on the full market value of property, and not anything less. Whether the legislature chooses to levy based upon assessed values which are lower than actual values, or whether the legislature declines to tax the property at a rate necessary to satisfy the underlying obligations, are matters of policy and fiscal management which this court cannot dictate. Nor are we called to pass upon those questions. The issue before us relates to the object upon which the debt limit in Section 11 is based, and basing it on appraised values is entirely consistent with the taxing authority granted to the legislature under the Organic Act.

3. Meaning of "Property."

[9] The next relevant issue pertains to the property upon which the debt limit is to be calculated. Under Section 11, the government's indebtedness shall not exceed 10% of the tax valuation of the "property on Guam." The Governor argues that all property on Guam is to be considered, real and personal, and without regard to whether the property is exempt from taxation. The AG argues that because only real property has been assessed for taxation purposes, only real property is to be considered in determining the allowable indebtedness. The AG further argues that property which is exempted from taxation should not be considered.

Again, with this issue, we look first to the language of Section 11, and draw comparison to the debt-limitation pro-

vision contained in the Organic Act of the Virgin Islands. Under 48 U.S.C. § 1403, the Virgin Islands' total indebtedness is a percentage of the value of "real property." 48 U.S.C.A. § 1403. The same Congress in enacting Section 11 limited Guam's debt to a percentage of "property." Because the word "property" in Section 11 is not further modified or clarified, it could only mean that all property on Guam, whether real or personal, be potentially included in calculating the debt limit. Property clearly includes both real and personal property. *See* 15 McQuillin, *supra*, § 41.08 ("The valuation [of property used to calculate the debt limit] is usually based on the ... value of personal as well as real property, but in some jurisdictions the ... value of real estate is the basis."); *see McLeland v. Marshall County*, 201 N.W. 401, 409 (Iowa 1924) (finding that the term "property" in the constitutional debt limitation provision means real and personal property); *Bauch v. City of Cabool*, 148 S.W. 1003, 1006 (Mo. Ct. App. 1912) (holding that stock of merchants are included in determining tax valuation of "property" in the debt-limitation provision).

Further, unlike the Virgin Islands' Organic Act, where the debt limit is based on the "*taxable* ... property in the islands," the debt limit in Guam's Organic Act is to be based on the "property on Guam." *Compare* 48 U.S.C. § 1403, *with* 48 U.S.C. § 1423a. One conclusion from this comparison is that Congress did not intend to base Guam's debt limit on *taxable* property, or in other words, property currently taxed.[7] This conclusion is conceivable; however, such inter-

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[7] We note that the Governor argues that "taxable property" in the Virgin Islands' Organic Act refers to property which *may* be taxed, as distinguished from property that *is* being taxed. *See* Governor's Opening Brief, p. 30 n. 14 (July 7, 2003). The Governor argues that Section 11 should be interpreted the same way, as including in the debt limit all property which is capable of being taxed, *i.e.*, is *taxable*. The Governor's contention that both Organic Acts should be interpreted in a similar manner ignores the fact that the two provisions employ different language. If the Governor's interpretation of the Virgin Islands' Organic Act were accepted, then this would mean that by deleting the phrase "taxable prop-

pretation disregards both the language of Section 11 and the policies underlying debt limitation provisions.

Section 11 provides that the debt limit be based on the "*tax* valuation" of property in Guam. Congress must have meant something when it used the word "tax" in the first part of the clause. By using the term tax valuation, it is clear that the debt limit is to be based on the value of property being taxed. By specifying that the tax valuation is to be used, there would be no need to then say that the debt limit is to be based on the taxable property. If so, the clause would read: "aggregate tax valuation of the taxable prop-

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erty" in Section 11, then all property on Guam, whether taxable or not (*i.e.*, capable of being taxed or not), can be used to determine the debt limit. This is untenable because if interpreted in that manner, then we could include property on Guam owned by the United States in calculating the debt limit. We do not think the Congress intended that U.S. owned property be included. Overall, we think that the phrase "taxable property" in the Virgin Island's Organic Act is better interpreted to mean property which is actually taxed, as distinguished from property which is merely capable of being taxed. *See Campbell v. Red Bud Consol. Sch. Dist.*, 198 S.E. 225, 229 (Ga. 1938) (concluding that the value of personal property exempted from taxation should not be included in determining the debt limit of 7% of the "assessed value of all *taxable* property"). In fact, it appears from the Virgins Islands' Five-Year Plan for Fiscal Recovery that the debt limit is based on property that is actually being taxed. *See* 5 Year Plan for Fiscal Recovery, www.usvi.org (July 23, 2003). In the report it was stated that in 1999, the Virgin Island's debt limit was $731 million, which is ten percent of the "taxable property in the Virgin Islands" valued at $7.31 billion. *See* http://www.usvi.org/oit/5yrplan/sectionviii000000plan000000offinance--pagesi-25.htm (July 23, 2003). In that same year, the government collected $55,382,513 in real property tax. *See* http://www.usvi.org/oit/5yrplan/parti-sectioni--exhibiti-30,pagesi-30andi-31.htm (July 23, 2003). Because real property tax is levied at 1.25% of 60% of the actual value of real property, a simple calculation reveals that a tax on $7.31 billion would yield approximately the same amount as the tax actually collected for that year. *See* http://www.usvi.org/oit/5yrplan/parti-sectioni--generalfund--pagesi-1throughi-40.htm (July 23, 2003). Thus, it appears that the $7.31 billion which the government based its debt limit on included the value of property which was actually taxed, and not exempt property. *Id.* (noting that 46% of all real property in the Virgin Islands is exempt from real property taxes by virtue of both the local law and the Virgin Island's Organic Act).

erty on Guam." Because "tax" is used in the first part of the clause, it would be superfluous to then say that the debt limit is to be based on the taxable property. Moreover, it is imprudent to base the debt limit on non-taxed property because such property is not revenue generating. "Debt" in the constitutional sense is secured by taxes and revenues from the general fund. The object of the limit is to place a cap on debt which is to be satisfied from the general revenues of the government. Property which is not taxed does not contribute to the general revenue of the government, and thus should not be used to determine the debt limit. *See State ex rel. Village of Oak Hill v. Brown*, 180 N.E. 707, 709 (Ohio 1932) (finding that *because bonds were secured by taxable property*, and because the indebtedness was therefore calculated based upon taxable property, the 1930 list, which included non-taxable property, could not be used in determining the city's debt limit) (emphasis added)[8],[9] If the gov-

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[8] See also *Employees' Retirement System v. Ho*, 352 P.2d 861, 886-87 (1960), where the dissenting justices provided a good explanation of the rationale for tying the debt limit to the property values, stating: It has been argued that the use of a percentage of assessed value as a measure of the State debt limit is without significance, since the real property tax is a county revenue. However, as explained by the Chairman of the Committee on Taxation and Finance during debate ... upon consideration of the debt limit provisions, June 19, 1950: the people that buy the bonds are interested in the ratio of your debts to your assessed value because while all of the tax revenues of the State or the counties naturally are available for the payment of the debt, it's been customary for bondholders to look to the real property tax as their real collateral. It is noteworthy that the power to impose a real property tax is reserved to the State by Article VII, section 3, so that this customary collateral may be looked to when the general faith and credit of the State are pledged as is done in the case of general obligation bonds, even though there be no real possibility that resort to the real property tax may be necessary. *Employees' Retirement System*, 352 P.2d at 886-87.

[9] This interpretation is not inconsistent with our previous determination that the appraised value of property be used to determine the government's debt limit. It is one thing to base the debt limit on a valuation consistent with the legislature's maximum authority to tax property, because it is the taxes on property which secures the debt. So long as the legislature can tax property at its full appraised valuation, there is ade-

ernment decides to tax currently exempt property in the future, then its debt limit may be increased accordingly at that later point in time.

[10] Accordingly, under Section 11, property which is not taxed at the present time, including personal property and exempt real property, is not included in determining the debt limit.

4. Calculating the Debt Limit: Sufficiency of 2002 Tax Rolls

Having determined that under Section 11, the debt limit is to be based on the appraised value of all taxed property on Guam, the next logical question is where or how to ascertain the appraised value of property. The language of Section 11 does not answer the question.

Unlike the debt-limitation provisions in other jurisdictions, Section 11 does not specify the particular interval of time when the debt limit computation is to be determined. *Cf. Allen*, 184 N.E.2d at 27 ("No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two percent of the value of the taxable property within such corporation, *to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness* ....") (quoting Article 13, § 1 of the Indiana Constitution) (partial emphasis added). Notwithstanding such omission in Section 11, we conclude that the value of property must necessarily be based on the tax roll in effect at the time the debt is incurred. Debt limits are generally calculated based on the value of property listed at the time the governmental debt is incurred. *State v. Spring*

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quate security underlying the debt. This is especially so in light of the fact that the legislature may increase the tax rate (*i.e.*, the levy), to satisfy the government's debt. It is a different thing altogether to say that the government can incur debt based on property it has chosen not to tax at all. Such exempt property cannot possibly generate revenue, thus does not secure the debt, and therefore should not be included in the determining the debt limit at the present time.

City, 260 P.2d at 527, 529 (Utah 1953) ("It is true that the validity of an indebtedness should be determined as of the time when it is incurred.... If, therefore, the bonds in question were valid when issued, they do not become invalid because of the fact that the defendant Spring City ended the year 1948 with a deficit."). Thus, it is at that time that the debt limit should be determined.

Under Guam law, the tax assessor is required to make a new tax list each year. Title 11 GCA § 24305 (1996) ("Annually, on or before the first day of September, the assessor shall ascertain all the taxable property in Guam and shall assess it to the persons owning or claiming it on the first Monday in March of that year at the value as determined in accordance with § 24306."); Title 11 GCA § 24320 (1996) ("The assessor shall prepare an assessment roll in which shall be listed all property which it is the duty of the assessor, to assess."). The annual tax roll is to be certified by the Secretary of the Board of Equalization by October 31st of each year. *See* Title 11 GCA § 24518 (1996). These annual lists contain the property valuations for property on Guam. *See* Decl. of Artemio B. Ilagan, ¶¶ 19-23 (July 7, 2003). Exempt property is also noted on the annual roll. *See* Decl. of Artemio B. Ilagan, ¶¶ 19-23 (July 7, 2003). Thus, the most recent tax roll, which contains the most recent tax valuations, should be used to determine the government's debt limit.

[11] Therefore, in determining the government's current debt limit, we use the appraised valuations of property as certified in the 2002 tax roll. In so doing, we reject the AG's contention that the 2002 tax list cannot be relied upon because it was computed in violation of 11 GCA § 24306, which provides that property on Guam be revalued every three years. As emphasized by the AG, the last triennial valuation required under 11 GCA § 24306 was conducted in 1993, and became effective in 1995. The AG argues that because a valuation has not been conducted since then, and because there is evidence that the property values on Guam have severely depreciated since that time, the 2002 tax list

cannot be relied upon in determining the government's current debt limit. We disagree.

Title 11 GCA § 24306 as it existed prior to amendment by P.L. 27- 21, (hereinafter "11 GCA § 24306 (1996)"), provided in relevant part:

> Commencing with the first Monday in March of 1978 and continuing every three (3) years thereafter the assessor shall reascertain the value of all property in Guam and such valuation shall be used as the basis for assessment during the annual adjustments for property which has been either improved or suffered loss, as provided by § 24307.

11 GCA § 24306 (1996). Under 11 GCA § 24307, the tax valuations for the years intervening the triennial valuations are to be based on the last triennial valuation as updated pursuant to section 24307. Specifically, section 24307 requires the tax assessor to ascertain the value of all property which has become taxable since the last valuation, such as new improvements to real property, or has changed in value due to a change in use, destruction, or other loss. Title 11 GCA § 24307 (1996).

On June 25, 2003, P.L. 27-21 was enacted, which amended 11 GCA § 24306 to provide that if the tax assessor fails to conduct the triennial valuations of property in Guam as required under that section, then the "*last completed* valuation as supplemented by the annual adjustments provided for in § 24307 shall be the property tax valuation used under this Chapter." Guam Pub. L. 27-21, § 1 (June 25, 2003). Essentially, P.L. 27-21 identifies the manner in which the annual assessments are to be generated if the required triennial valuation is not conducted.

Notwithstanding the recent amendment to section 24306, for purposes of determining the debt limit we are constrained to determining the sufficiency of the 2002 list with regard to the law at the time the list was certified. The amendment to section 24306, pursuant to P.L. 27-21 is not relevant here because it was not in effect at the time the 2002 tax roll was certified. The procedure for establishing

annual tax valuations announced in section 24306 *as amended* cannot work to retroactively affect the valuations contained in the 2002 tax roll.

At the outset, we agree with the AG that the fact that the Organic Act does not include a requirement that tax valuations be conducted at a particular frequency indicates that the Congress gave the legislature the authority to determine the frequency of valuations for assessment purposes. The legislature's intent as to when tax valuations were to be conducted was evident at the time the 2002 tax roll was certified. Specifically, the legislature required, by statute, that property valuations be conducted every three years. 11 GCA § 24306 (1996).

[12] However, we do not find that the failure to undertake the triennial valuation required by 11 GCA § 24306 (1996) rendered the 2002 tax roll, and the valuations contained therein, invalid for purposes of ascertaining the debt limit. The reason is evident in the statutory language. Title 11 GCA § 24306 (1996) specifically provides that the triennial valuations "shall be used as the basis for *assessment* ...." 11 GCA § 24306 (1996). Thus, while the fact that the required triennial valuations were not conducted may affect the validity or accuracy of individual *tax assessments*, an issue we do not decide here, these triennial valuations are simply not required for purposes of determining the debt limit. With regard to the debt limit, we have already stated that the calculation is to be based on the most recent tax valuation as certified by the responsible government officer at the time the debt is incurred.

We further emphasize that it is unnecessary to address the AG's contention that the 2002 tax list cannot be used for taxation purposes because of the alleged decline in values of property on Guam. Such an inquiry concerning the accuracy of the tax list is more relevant in a case brought for the purposes of challenging the propriety of tax assessments, and in any event, necessarily requires the benefit of the fact-finding process and the mechanisms available in such proceedings. For purposes here, where the question is whether

the 2002 tax list can be relied upon in calculating the debt limit, all that is required is a determination of whether the 2002 tax list was developed in accordance with the sufficient procedures provided under the law. To the extent that sufficient procedures existed to ensure a fair and reasonable valuation, we are satisfied that the current tax list may be used to calculate the debt limit.[10]

A particular method of property tax valuation must be sustained unless the assessor's actions are "discriminatory or so unreasonable that property is substantially overvalued and thus injustice and illegality result...." *Uniroyal, Inc. v. Board of Tax Review*, 438 A.2d 782, 789 n.8 (Conn. 1981). The test for unreasonableness must be judged in the first instance by reference to the limits on the taxing power set forth under applicable law.

The only limit to the legislature's taxing power in the Organic Act is the requirement in Section 11 that taxes be *uniform*. 48 U.S.C.A. § 1423a ("Taxes and assessments on property ... may be imposed for the purposes of the government of Guam *as may be uniformly provided* by the Legislature of Guam."). The fact that the 2002 tax roll was based on a 1993 appraisal does not appear to violate the requirement of uniformity in the Organic Act, nor does it render the valuations in the 2002 list unacceptably discriminatory or unreasonable. In fact, other courts have found tax valuations spanning this length of time to be acceptable. *See Uniroyal, Inc.*, 438 A.2d at 787 (confirming the legislature's authority to determine that tax assessment valuations be conducted every ten years) ("The remedy of revaluation was established by the legislature and it was the judgment of the legislature that the remedy need only be available once each decade."); *cf. Allen*, 184 N.E.2d at 27 (quoting an Indiana statute, Chapter 316 of the Acts of 1959, as providing for the "reassessment, for taxation purposes, of all real estate and

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[10] This is not to foreclose the AG from challenging, in accordance with Guam law, the preparation of the 2002 tax roll list.

improvements made thereon in 1961 and *every eight years thereafter*").

[13] Moreover, there are mechanisms which exist in the statutory scheme to ensure the fairness of the valuations in the 2002 list. Under 11 GCA § 24307, the assessor is required to update the tax roll annually with information regarding new properties and the destruction of old properties. 11 GCA § 24307 (requiring the tax assessor, during the years between the triennial assessment, to "ascertain the value of all property ... which shall have become taxable since the last valuation, including new improvements or additions to old improvements ... and in the case of destruction or injury ... the value of which shall have been included in the former valuation of the property, the assessor shall determine the value of such loss and reduce the valuation accordingly."). Furthermore, property owners who claim a reduction in valuation based on the change in use of their property, or because of destruction or injury to the property, are required to file a report with the tax assessor by March 1st of the year in which the reduction is sought. Title 11 GCA § 24310 (1996). Similarly, with regard to reduction in appraisal values due to market forces, the law provides a mechanism to challenge an annual assessment. *See* Title 11 GCA § 24509 (1996) ("[A]ny person assessed, or his agent, may file with the Board [of Equalization] on or before September 15 [until October 15], a written application for equalization of his assessment or correction of the roll."), and Title 11 § 24511 (1996) ("The Board, *upon a showing of unreasonableness*, may increase or reduce any assessment ... throughout Guam.") (emphasis added). Thus, the law provides mechanisms to protect taxpayers from being taxed on an inaccurate assessment. A failure to file a report with the tax assessor claiming a devaluation based on change in use or destruction or injury to property results in the waiver of "of any right to such reduction in the valuation." 11 GCA § 24310. Similarly, a failure to file an application for equalization on or before October 15 for the alteration of the roll of any year bars a claim for alteration of the roll for that year. Title 11 GCA § 24510 (1996). Thus, the law forces property

owners to challenge the last tax list and the valuations contained therein. Presumably, taxpayers act in accordance with their rights and with the interest in not being subjected to higher taxes.[11] Because the tax lists are composed of property valuations which reflect values based on the last assessment in light of taxpayer challenges to property values, the valuations contained in the 2002 tax roll possess an indicia of reliability.

From our record, it appears that adequate procedures existed for arriving at the valuations in the 2002 tax roll. Furthermore, property owners have not been unduly deprived of their statutory rights to challenge assessments. Thus, we find that the 2002 tax roll was the product of a fair and reasonable valuation system. Accordingly, the 2002 tax list may be relied upon to determine the current debt limit under Section 11.

[14] Although this is not a contested suit in the traditional sense, we adopt the standard for such cases that the burden to show that a tax valuation system and the method-

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[11] In fact, there have been many appeals made to the Board of Equalization. We do note that there are over approximately 300 pending assessment appeals currently before the Board, several of which represent appeals by condominium or multi-family residences. *See* Decl. of Artemio B. Ilagan, ¶ 18 (July 7, 2003). These represent the appeals outstanding since 2000. This is indeed problematic to us. However, we do not find this detrimental to the analysis herein because of the representation that the Governor has appointed members to the Board who are awaiting confirmation. We can only presume that the Board members, when appointed, will act expeditiously in carrying out their duties as set forth under the law. We also find that most of the outstanding appeals were filed in 2001 and 2002, thus the backlog is for recent years. To the extent there becomes a backlog for a significant number of years, then we may have a clearer case that the valuation system is failing. Moreover, until those appeals are concluded, the presumption is that the assessments are correct. *See FMC Corp. (Peroxygen Chems. Div.) v. Unmack*, 677 N.Y.S.2d 269, 272 (N.Y. 1998) ("Our analysis begins with the recognition that a property valuation by the tax assessor is presumptively valid...."). Additionally, the numbers of appeals are not high in relation to the total number of land and building parcels on Guam, which, according to the record, exceeded 50,000.

ology employed therein is unreasonable rests with the person challenging them. *See* Title 11 GCA § 24511 (1996) (providing that the Board of Equalization may increase or reduce an assessment "upon a showing of unreasonableness"); *Uniroyal, Inc.*, 438 A.2d at 789 n.8. Here, the AG has not shown that the statutory procedures governing the establishment of the 2002 tax roll are inadequate for purposes of arriving at the current valuation. Accordingly, and in light of the fact that the 2002 tax list has not been invalidated by a court of competent jurisdiction in the appropriate case, we conclude that the 2002 list may be considered in calculating the government's current debt limit.

According to the documents in the record, the appraised values of the real property on Guam and structures thereon as certified on the 2002 tax roll is $11.333 billion. *See* Decl. of Artemio B. Ilagan, ¶ 22 (July 7, 2003). Approximately $183.7 million of the total represents exempt property. Decl. of Artemio B. Ilagan, ¶ 23 (July 7, 2003). Thus, the appraised value of non-exempt property is $11.1493 billion. In accordance with the 2002 list, the government's debt limit, calculated at 10% of the appraised value, is $1.11493 billion.

5. "Indebtedness"

The final issue before the court is whether the issuance of the bonds authorized under P.L. 27-19 would violate the Organic Act in light of our interpretation of Section 11. In calculating the debt limit pursuant to a constitutional debt-limitation statute, the court must: (1) determine the "aggregate tax value of property in Guam;" (2) calculate the amount which is 10% of that amount; (3) determine the outstanding "public indebtedness;" and (4) determine whether the indebtedness contemplated under P.L. 27-19, when added to the outstanding "public indebtedness," would exceed the 10% figure. *See Miller v. City of Glenwood*, 176 N.W. 373, 376 (Iowa 1920) ("An observance of ... [the constitutional debt-limit] provision involves: First, an inspection of the tax list to ascertain the amount of taxable property in value in the city; and, second, avoidance of debt beyond the limit of 5 percent of such value."). Having discussed the first

two issues relevant to the calculation, the remaining issues relate to the outstanding public indebtedness, and the indebtedness which may be created upon the issuance of the bonds.

Section 11 imposes a limit on "public indebtedness." 48 U.S.C.A. § 1423a. Thus, in determining the amount of current governmental debt, we must interpret the term "indebtedness."

Courts agree that the terms "debt" and "indebtedness" in the constitutional sense are not technical terms; but rather, should be viewed "in their broad, general meaning, of all contractual obligations to pay in the future for considerations received in the present." *Keller*, 49 A. at 782; *see also City of Hartford*, 493 N.W.2d at 51 ("[T]here is nothing technical about the meaning of debt in its constitutional sense."); *Knowlton v. Ripley County Mem'l Hosp.*, 743 S.W.2d 132, 136 (Mo. Ct. App. 1988) ("A debt is understood to mean an unconditional promise to pay a fixed sum at some specified time, and is quite different from a contract to be performed in the future, depending upon a condition precedent, which may never be performed, and which cannot ripen into a debt until performed.") (citation omitted). Similarly, debt, in a constitutional sense, has been characterized as an obligation in which the debtor is obliged to pay and the creditor has a right to receive and enforce payment. *City of Hartford*, 493 N.W.2d at 51 n.12; *State ex rel. Capitol Addition Bldg. Comm'n v. Connelly*, 46 P.2d 1097, 1100 (N.M. 1935) ("The idea of a 'debt' in the constitutional sense is that an obligation has arisen out of contract, express or implied, which entitles the creditor unconditionally to receive from the debtor a sum of money, which the debtor is under a legal, equitable, or moral duty to pay without regard to any future contingency.") (citation omitted). Furthermore, debt only arises out of an obligation to pay money from funds to be provided in the future, as distinguished from funds presently on hand. *See City of Hartford*, 493 N.W.2d at 51; *see also Hodges v. Crowley*, 57 N.E. 889, 892 (Ill. 1900) (finding that debt in the constitutional sense is something payable in the

future because an obligation payable out of present funds is characterized as "one thing simply given and accepted in exchange for another") (citation omitted). Another recognized proposition is that constitutional debt limitations "comprehend[] a debt pledging for its repayment the general faith and credit of the state or municipality ... and contemplating the levy of a general property tax as the source of funds with which to retire the same." *State ex rel. Capitol Addition Bldg. Comm'n*, 46 P.2d at 1101. Finally, to constitute debt, the obligation "must be an absolute undertaking; if the municipality may avoid its obligation or if there remain conditions precedent to it, there is no indebtedness." *City of Hartford*, 493 N.W.2d at 51 n.13 (citation omitted). Thus, "executory and contingent contracts which are to be performed *in futuro* do not constitute an indebtedness against the municipal or quasi municipal corporation, in the sense of the constitutional inhibition, until such contracts have been performed."[12] *Knowlton*, 743 S.W.2d at 137 (recognizing that installment lease with the option for annual renewal were not debts) (citation omitted).

[15] As shown above, courts scrutinize the term "debt" in constitutional debt-limitation provisions with regard to both the nature of the obligation itself and the source of payment securing the obligation. From these principles, courts have recognized various types of obligations which are not included in the definition of "debt." Section 11 specifically excludes certain obligations from the debt calculation. Section 11 provides that "[b]onds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this subsection." 48 U.S.C.A. § 1423a. We do not believe that the exclusion in Section 11 precludes us from otherwise interpreting the term "indebtedness" as used in

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[12] Because contingent obligations are not "debt" in the constitutional sense, the so-called "unfunded liability" obligations of the Retirement Fund are not "debt." This liability is contingent in nature.

Section 11. The most that can be said is that Congress intended that there be no question that certain obligations are not to be included in determining the amount of public indebtedness for debt-limitation purposes. Accordingly, we will interpret "indebtedness" in Section 11 with reference to the definition of "debt," which necessarily encompasses exclusions, recognized by other courts.

Whether certain governmental obligations constitute debts in the constitutional sense, and are thus to be included in the debt limit calculation, is a highly litigated issue. For purposes here, we will contain the analysis to the outstanding obligations evidenced in the record. The following is a list of outstanding obligations of the government of Guam as of December 31, 2002, set forth in the Declaration of Edward Untalan, the Finance and Economic Director of the Guam Economic Development and Commerce Authority:

1. Note to Farmers Home Administration ("Superior Court Note") secured by the Judicial Building Center and court fees	$6,678,135
2. Government of Guam General Obligation Bonds, 1993 Series A secured by the Full Faith and Credit of the Government of Guam	$135,235,000
3. Government of Guam General Obligation Bonds, 1995 Series A secured by the Full Faith and Credit of the Government of Guam	$50,020,000
4. Government of Guam $10 million loan as per P.L. 26-84 secured by the pledge of Federal Government Section 30 monies and the Full Faith and Credit of the Government of Guam	$10,000,000
5. Government of Guam Limited Obligation Infrastructure Improvement Bonds, 1997 Series A, secured by Hotel Taxes	$64,195,000
6. Government of Guam Limited Obligation Highway Refunding Bonds, 2001 Series	$47,875,000

A, secured by Liquid Fuel Taxes, Vehicle Registration and License Fees, etc.	
7. GEDA Tobacco Settlement Asset-Backed Bonds, Series 2001A, secured by Tobacco Settlement Receipts	$10,702,980.10
8. GEDA Tobacco Settlement Asset-Backed Bonds, Series 2001B, secured by Tobacco Settlement Receipts	$13,494,478.85
9. Government of Guam Limited Obligation (Series 30) Bonds, Series 2001A, secured by the pledge of Federal Government Section 30 monies and the Full Faith and Credit of the Government of Guam	$70,675,000
10. Revenue Bonds secured by the revenues generated by a government agency or instrumentality[13]	$774,360,656

[16] *See* Decl. of Edward Untalan, Exhibit A (July 7, 2003).

The total amount of these debts rounded upwards to the nearest dollar amounts to $1,183,236,250. Of that amount, the Revenue Bonds (Item 10) are not considered "debt" because they are fully payable and secured only by the revenue generated from public improvements or undertakings. *See* 48 U.S.C.A. § 1423a ("Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this subsection.").

Similarly, the Superior Court Note (Item 1), which is secured by court fees and a mortgage on the judicial center

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[13] This Item represents 13 separate bond issuances with outstanding amounts due. All of these bonds are payable directly from the revenues of the government entity.

building, is similarly not "debt" because the obligation is secured by a pledge of the fees payable to the court which are revenues from a public undertaking. *Id.* Additionally, the fact that the building is used to secure the note does not render the note a debt because there is no pledge of the general revenue for its payment. *See Lerch v. Md. Port Auth.*, 214 A.2d 761, 772 (Md. 1965). In *Lerch v. Maryland Port Authority*, the court recognized the majority view that "the acquisition of property by a municipality under an agreement whereby the cost thereof is to be paid out of the revenue from the property itself does not give rise to a debt ... within the meaning of a constitutional or statutory limitation of indebtedness, although the property so acquired is encumbered by a mortgage or lien to secure the payment of the cost thereof, where the encumbrance does not attach to any other property of the municipality...." *Id.* (citation omitted). Although the court there considered a debt-limitation provision significantly different from ours, we agree with the rationale that the pledge of a structure to secure the payment of bonds or other obligation issued to finance its construction is not "debt" because "the municipality can walk away from the obligation none the poorer. From the point of view of assets and revenues available for expenditure it is in the same position after entering into these obligations as it was before." *Id.* at 774 (citation omitted) (distinguishing obligations secured by previously existing property from obligations secured by property which is to be constructed with the bond proceeds, the latter of which is not "debt"); *City of Hartford*, 493 N.W.2d at 52 ("According to the pre-existing asset doctrine, an obligation is not debt in the constitutional sense if it is neither 1) a general obligation of the municipality entitling the creditor to look to the municipality's revenue for repayment nor 2) secured by any asset owned by the municipality *prior to its incurring the obligation.*") (emphasis added).

Furthermore, the bonds secured by the tobacco settlement money (Items 7 and 8) are not considered "debts" because they are secured by a "special fund" which is not funded by revenue derived from taxation, and the obligation

does not now, or cannot in the future, burden the general fund. *Bd. of State Harbor Comm'rs v. Dean*, 258 P.2d 590, 592 (Cal. Dist. Ct. App. 1953). "[A] limitation upon municipal indebtedness is not violated by an obligation which is payable out of a special fund, if the municipality is not liable to pay the same out of its general funds should the special fund prove to be insufficient, *and the transaction by which the indebtedness is incurred cannot in any event deplete the resources of the municipality.*" *Id.* (emphasis added) (citation omitted).

[17] We do find, however, that the bonds secured by other taxes such as hotel tax and fuel tax (Items 5 and 6), which are part of the general fund, constitute "debts" for purposes of the debt-limitation provision. These bonds are not secured by "the revenues derived from a public improvement or undertaking" and thus do fall within the obligations excluded from "indebtedness" in Section 11. Furthermore, these bonds do not fall within the special fund doctrine. We agree with the jurisdictions which hold that "an obligation to be funded from general tax revenues, whether they be *ad valorem* or excise taxes, is a 'debt' within the meaning of the debt-limitation provision." *State ex rel. Lesmeister v. Olson*, 354 N.W.2d 690, 697 (N.D. 1984). By accepting the argument that "a pledge of any specific tax revenues would be sufficient to invoke the 'special fund' doctrine, the constitutional debt limitation would be largely nullified, since the legislature could exempt almost any obligation from its strictures merely by identifying a specific tax from which the obligation could be paid." *Id.* at 698 (citation omitted). "Under this contention the Legislature ... could divide the public revenue into numerous subdivisions, calling one the 'road fund,' another the 'school fund,' ... and others almost without limit. Debts could then be contracted in unlimited amounts and payable in the far distant future, and still be immune from attack as violating constitutional provisions limiting indebtedness.... A mere statement of the

proposition carries with it, it seems to us, its own refutation." *Id.* (citation omitted).[14]

All other items listed above pledge the full faith and credit of the government, and are thus "debts" in the constitutional sense and are to be added to the overall government indebtedness. *State ex rel. Capitol Addition Bldg. Comm'n*, 46 P.2d at 1101 (debt is an obligation "pledging for its repayment the general faith and credit of the state or municipality ... and contemplating the levy of a general property tax as the source of funds with which to retire the same.").

The Governor also admits that in addition to the bond obligations listed above, there is currently an estimated deficit of $10,642,709. The Governor argues that these amounts are not debts under Section 11 because they are obligations made in anticipation of revenues for the fiscal year. We agree. Obligations which are part of current expenses, and are expected to be paid from current revenues, are not debt. *See City of Waycross v. Tomberlin*, 91 S .E. 560, 561 (Ga. 1917); *Wilkes County v. Mayor and Council of Washington*, 145 S.E. 47, 53 (Ga. 1928) ("Before a liability for a legitimate current expense can be incurred by a municipality without creating a debt ... there must, at the time of incurring the liability, be a sufficient sum in the treasury which can be lawfully used to pay the liability incurred, or there must be authority and ability to raise a sufficient sum to discharge the liability by taxation during the current year ....") (citation omitted). The current obligations identified are not "debts" because they are not payable in the future from taxes to be collected beyond the fiscal year.

[18] In his Opening Brief, the AG identifies several other obligations, not treated above, which he believes should be included in the calculation of the current outstanding debt. These include:

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[14] We note that the court in *Olson* discussed the meaning of "debt" under a significantly different debt-limitation provision, however, again, we find that court's logic to be compelling for application with regard to the limit contained in Section 11.

1. Utility Payments to GPA	$30,400,000
2. Payments to the Retirement Fund	$25,300,000
3. Vendor Payables	$5,300,000
4. Withholding Tax Payments from 2002	$15,400,000
5. Past Due Income Tax Refunds	$139,200,000
6. Past Due Obligations for the current year	$80,000,000
7. Receivables through May 30, 2003 due to the Gov't of Guam Retirement Fund	$130,500,000
8. Department of Education Debt	$21,000,000

We do not find that any of these items are "debt" under Section 11. These items appear to have been incurred with the purpose of payment out of revenues for the years that they were incurred. Thus, at the time they were incurred they were current obligations, and they have not changed in form merely because they were not paid as contemplated during the fiscal years in which they became due.

Accordingly, in light of the foregoing, the total amount of "public indebtedness" is $378,000,000. As stated earlier, according to the 2002 tax list, the appraised value of the real property on Guam and structures thereon is $11.333 billion. *See* Decl. of Artemio B. Ilagan, ¶ 22 (July 7, 2003). Approximately $183.7 million of the total represents exempt property. Decl. of Artemio B. Ilagan, ¶ 23 (July 7, 2003). Thus, the appraised value of non-exempt property is $11.1493 billion, rendering the government's debt limit, calculated at 10% of the appraised value, to be $1.11493 billion.

The final remaining issue is whether the issuance of the bonds as authorized by P.L. 27-19 will cause the government to exceed the debt limit. We find that it would not. Even assuming the total amount of bonds authorized (totaling $418,309,857) are issued, and assuming that all bonds issued under P.L. 27-19 are considered "new" debt to be added to

the government's current indebtedness of $378,000,000, the debt limit of $1.11493 billion would not be exceeded.[15]

IV.

Section 11 of the Organic Act limits the public indebtedness of Guam to 10% of the "aggregate tax valuation of the property on Guam." This debt limit is to be calculated on the appraised value of the real or personal property currently subject to taxation. The appraised values of such property should be taken from the tax roll in effect at the time the debt is incurred. We find that the 2002 tax list is appropriate for use in calculating the government's current debt limit notwithstanding that the last valuation of the property on Guam was conducted in 1993. Based on the valuations provided in the 2002 tax list, and considering the current outstanding debt of the government of Guam, the issuance of bonds authorized under P.L. 27-19 would not violate Section 11 of the Organic Act.

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[15] It is worthy of mention that the bonds under P.L. 27-19 which may be used to fund an escrow to pay debt service on the 1993 Series A bonds are not "debt." *See Keeney v. Kanawha County Court*, 175 S.E. 60, 61 (W.Va. 1934). "[T]here is ... overwhelming authority to the effect that the issuance of refunding bonds is not the creation of a new debt, but is simply a change in the form of the old and in the evidence representing it." *Id.*

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUGLAS B. MOYLAN, Petitioner, v. FELIX P. CAMACHO Respondent.	No. 03-72836 D.C. No. CR-03-00001-CRQ District of Guam, Agana ORDER

[STAMP: FILED Oct. 23, 2003
Cathy A. Catterson, Clerk
U.S. Court of Appeals]

Before: WARDLAW, BERZON and CLIFTON,
Circuit Judges

The petition for a writ of certiorari to review a final decision of the Supreme Court of Guam is granted. The Clerk of the Supreme Court of Guam shall file the certificate of record with the Clerk of this court by November 17, 2003. *See* 9th Cir. R. 6-2(g), (h). Petitioner's opening brief on review is due December 29, 2003; respondent's answering brief is due January 28, 2004; and petitioner's optional reply brief is due 14 days after service of the answering brief. Briefing shall comply with Federal Rule of Appellate Procedure 32.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUGLAS B. MOYLAN, Petitioner, v. FELIX P. CAMACHO Respondent.	No. 03-72836 D.C. No. CR-03-00001-CRQ District of Guam, Agana ORDER

[STAMP: FILED Mar. 6, 2006
Cathy A. Catterson, Clerk
U.S. Court of Appeals]

Before: FARRIS, NOONAN, and RAWLINSON, Circuit Judges.

On October 30, 2004, Congress amended 48 U.S.C. § 1424-2 and withdrew the Ninth Circuit's jurisdiction to review appeals from Guam courts. This court recently held in *Santos v. Guam*, 436 F.3d 1051, 1052-54 (9th Cir. 2006), that all appeals from Guam courts currently pending in the Ninth Circuit, regardless of the date filed, must be dismissed for lack of jurisdiction. This appeal, therefore, is **DISMISSED.**

APPENDIX D

ORGANIC ACT OF GUAM
(excerpts)

48 U.S.C. § 1421g

(a) Public health services

Subject to the laws of Guam, the Governor shall establish, maintain, and operate public-health services in Guam, including hospitals, dispensaries, and quarantine stations, at such places in Guam as may be necessary, and he shall promulgate quarantine and sanitary regulations for the protection of Guam against the importation and spread of disease.

(b) Public educational system

The Government of Guam shall provide an adequate public educational system of Guam, and to that end shall establish, maintain, and operate public schools according to the laws of Guam.

(c) Office of Public Prosecutor; Office of Public Auditor

The Government of Guam may by law establish an Office of Public Prosecutor and an Office of Public Auditor. The Public Prosecutor and Public Auditor may be removed as provided by the laws of Guam.

(d) Attorney General

(1) The Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam. At such time as the Office of the Attorney General of Guam shall next become vacant, the Attorney General of Guam shall be appointed by the Governor of Guam with the advice and consent of the legislature, and shall serve at the pleasure of the Governor of Guam.

(2) Instead of an appointed Attorney General, the legislature may, by law, provide for the election of the Attorney General of Guam by the qualified voters of Guam in general

elections after 1998 in which the Governor of Guam is elected. The term of an elected Attorney General shall be 4 years. The Attorney General may be removed by the people of Guam according to the procedures specified in section 1422d of this title or may be removed for cause in accordance with procedures established by the legislature in law. A vacancy in the office of an elected Attorney General shall be filled—

(A) by appointment by the Governor of Guam if such vacancy occurs less than 6 months before a general election for the Office of Attorney General of Guam; or

(B) by a special election held no sooner than 3 months after such vacancy occurs and no later than 6 months before a general election for Attorney General of Guam, and by appointment by the Governor of Guam pending a special election under this subparagraph.

48 U.S.C. § 1422

The executive power of Guam shall be vested in an executive officer whose official title shall be the "Governor of Guam." The Governor of Guam, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices. If no candidates receive a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes cast. The first election for Governor and Lieutenant Governor shall be held on November 3, 1970. Thereafter, beginning with the year 1974, the Governor and Lieutenant Governor shall be elected every four years at the general election. The Governor and Lieutenant Governor shall hold office for a term of four years and until their successors are elected and qualified.

No person who has been elected Governor for two full successive terms shall again be eligible to hold that office until one full term has intervened.

The term of the elected Governor and Lieutenant Governor shall commence on the first Monday of January following the date of election.

No person shall be eligible for election to the office of Governor or Lieutenant Governor unless he is an eligible voter and has been for five consecutive years immediately preceding the election a citizen of the United States and a bona fide resident of Guam and will be, at the time of taking office, at least thirty years of age. The Governor shall maintain his official residence in Guam during his incumbency.

The Governor shall have general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam. He may grant pardons and reprieves and remit fines and forfeitures for offenses against local laws. He may veto any legislation as provided in this chapter. He shall appoint, and may remove, all officers and employees of the executive branch of the government of Guam, except as otherwise provided in this or any other Act of Congress, or under the laws of Guam, and shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Guam and the laws of the United States applicable in Guam. Whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, he may summon the posse comitatus or call out the militia or request assistance of the senior military or naval commander of the Armed Forces of the United States in Guam, which may be given at the discretion of such commander if not disruptive of, or inconsistent with, his Federal responsibilities. He may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, proclaim the island, insofar as it is under the jurisdiction of the government of Guam, to be under martial law. The members of the legislature shall meet forthwith on

their own initiative and may, by a two-thirds vote, revoke such proclamation.

The Governor shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress. The Governor shall also make such other reports at such other times as may be required by the Congress or under applicable Federal law. He shall have the power to issue executive orders and regulations not in conflict with any applicable law. He may recommend bills to the legislature and give expression to his views on any matter before that body.

There is hereby established the office of Lieutenant Governor of Guam. The Lieutenant Governor shall have such executive powers and perform such duties as may be assigned to him by the Governor or prescribed by this chapter or under the laws of Guam.

48 U.S.C. § 1423a

The legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam. Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valua-

tion of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section. All bonds issued by the government of Guam or by its authority shall be exempt, as to principal and interest, from taxation by the Government of the United States or by the government of Guam, or by any State or Territory or any political subdivision thereof, or by the District of Columbia. The Secretary of the Interior (hereafter in this section referred to as "Secretary") is authorized to guarantee for purchase by the Federal Financing Bank bonds or other obligations of the Guam Power Authority maturing on or before December 31, 1978, which shall be issued in order to refinance short-term notes due or existing on June 1, 1976 and other indebtedness not evidenced by bonds or notes in an aggregate amount of not more than $36 million, and such bank, in addition to its other powers, is authorized to purchase, receive or otherwise acquire these same. The interest rate on obligations purchased by the Federal Financing Bank shall be not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 per centum, plus 1 per centum per annum. The Secretary, with the concurrence of the Secretary of the Treasury, may extend the guarantee provision of the previous sentence until December 31, 1980. The Secretary, upon determining that the Guam Power Authority is unable to refinance on reasonable terms the obligations purchased by the Federal Financing Bank under the fifth sentence of this section by December 31, 1980, may, with the concurrence of the Secretary of the Treasury, guarantee for purchase by the Federal Financing Bank; and such bank is authorized to purchase, obligations of the Guam Power Authority issued to refinance the principal amount of the obligations guaranteed under the fifth sentence of this section. The obligations that refinance such principal amount shall mature not later than December 31,

1990, and shall bear interest at a rate determined in accordance with section 2285 of Title 12. At the request of the Board of Directors of the Guam Power Authority for a second refinancing agreement and conditioned on the approval of the Government of Guam pursuant to the law of Guam, and conditioned on the establishment of an independent rate-making authority by the Government of Guam, the Secretary may guarantee for purchase by the Federal Financing Bank, on or before December 31, 1984, according to an agreement that shall provide for—

(a) substantially equal semiannual installments of principal and interest;

(b) maturity of obligations no later than December 31, 2004;

(c) authority for the Secretary, should there be a violation of a provision of this legislation, or covenants or stipulations contained in the refinancing document and after giving sixty days notice of such violation to the Guam Power Authority and the Governor of Guam, to dismiss members of the Board of Directors or the general manager of the Guam Power Authority, and (1) appoint in their place members or a general manager who shall serve at the pleasure of the Secretary, or (2) contract for the management of the Guam Power Authority; and

(d) an annual simple interest rate of seven per centum; and

the Federal Financing Bank shall purchase such Guam Power Authority obligations if such Guam Power Authority obligations are issued to refinance the principal amount scheduled to mature on December 31, 1990. Should such second refinancing occur, (1) the independent rate-making authority to be established by the Government of Guam, or in its absence, the Board of Directors of the Guam Power Authority, shall establish rates sufficient to satisfy all financial obligations and future capital investment needs of the Guam Power Authority that shall be consistent with generally accepted rate-making practices of public utilities, and (2) the Government of Guam shall not modify the requirements

of such refinancing agreement without agreement of the Secretary. There are authorized to be appropriated to the Secretary of the Interior for payment to the Federal Financing Bank such sums as are necessary to pay (1) the repurchase payment required under the fifth paragraph of the December 31, 1980, note from the Guam Power Authority to the Federal Financing Bank and any subsequent repurchase payments required under the second refinancing agreement, and (2) the interest rate differential between the seven per centum to be paid by the Guam Power Authority and the second refinancing agreement and the interest rate that would otherwise be determined in accordance with the above cited section 2285 of Title 12. Should the Guam Power Authority fail to pay in full any installment of interest or principal when due on the bonds or other obligations guaranteed under this section, the Secretary of the Treasury, upon notice from the Secretary shall deduct and pay to the Federal Financing Bank or the Secretary, according to their respective interests, such unpaid amounts from sums collected and payable pursuant to section 1421h of this title. Notwithstanding any other provision of law, Acts making appropriations may provide for the withholding of any payments from the United States to the government of Guam which may be or may become due pursuant to any law and offset the amount of such withheld payments against any claim the United States may have against the government of Guam or the Guam Power Authority pursuant to this guarantee. For the purpose of this chapter, under section 3713(a) of Title 31 the term "person" includes the government of Guam and the Guam Power Authority. The Secretary may place such stipulations as he deems appropriate on the bonds or other obligations he guarantees.

48 U.S.C. § 1424-2 (2000)

The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other

matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters proceedings: *Provided*, That for the first fifteen years following the establishment of the appellate court authorized by section 1424-1(a) of this title, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had. The Judicial Council of the Ninth Circuit shall submit reports to the Committee on Energy and Natural Resources of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

48 U.S.C. § 1424-2 (as amended in 2004)

The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings.

APPENDIX E

GUAM CODE ANNOTATED
(excerpts)

Guam Code Ann. tit. 2, § 1112

Upon the election of the Speaker, the Legislature shall proceed to organize, adopting rules governing its procedure and with the election of a Vice-Speaker, Legislative Secretary and Secretary General of the Guam delegation to the Asian Pacific Parliamentarians Union, who shall be members of the Legislature, and the following attaches: Sergeant-at-Arms, Chaplain, Recording Secretary, and Legislative Counsel, none of whom shall be a member of the Legislature. All such officers shall be elected for the entire term of the Legislature and shall serve during all regular and special sessions thereof, unless otherwise ordered by a majority vote of the Legislature.

Guam Code Ann. tit. 5, § 1512

(a) Authorization of Issuance of Bonds. The Governor of Guam, *I Maga'lahen Guåhan*, is authorized to issue one or more series of bonds of the government of Guam as provided in this Section, in an aggregate principal amount not to exceed the amount necessary to provide Two Hundred Eighteen Million Three Hundred Nine Thousand Eight Hundred Fifty-Seven Dollars ($218,309,857) for the payment of the General Fund expenses listed in subsection (m) (other than subsection (m)(vii) of this Section) and in an aggregate principal amount necessary to provide Two Hundred Million Dollars ($200,000,000) for the payment of the General Fund expenses listed in subsection (m)(vii), and in each case to fund necessary reserves and to pay expenses incurred in connection with the issuance of such bonds not already included in an existing appropriation for or the regular budget of any government agency or instrumentality or public corporation providing any service in connection with the issuance of such

bonds; provided, however, that bonds may not be issued in an amount that would cause a violation of the debt limitation provisions of 48 U.S.C. § 1423a (§ 11 of the Guam Organic Act).

(b) Authorization of Issuance of Bond Anticipation Notes. The Governor, *I Maga'lahen Guåhan*, is also authorized to issue one or more series of bond anticipation notes of the government of Guam as provided in this Section, in an aggregate principal amount not to exceed the amount necessary to provide Fifty Million Dollars ($50,000,000) for any of the purposes for which the bonds described in subsection (a) of this Section are authorized. Unless otherwise expressly provided, the term "bonds" as used in this Section shall include the notes, but the term "notes" shall be limited to the bond anticipation notes. Participation of banks doing business on Guam shall not be restricted. The authorization in this subsection (b) for the issuance of the Bond Anticipation Notes shall be effective when the financing is approved by *I Liheslaturan Guåhan* [the Legislature] for the bonds authorized in subsection § 1512(a).

(c) Terms and Conditions Determined by Certificate or Indenture. The terms and conditions of the bonds shall be as determined by *I Maga'lahen Guåhan* [the Governor] by the execution of a certificate or indenture authorizing the issuance of the bonds upon or prior to the issuance of the bonds; provided, however, that such terms and conditions shall be consistent with this Section, and that the bonds shall mature not later than the year 2024, and shall bear interest at such rates and be sold for such price or prices as shall result in a yield to the bondholders not exceeding six and one-half percent (6.5%) per annum.

(d) Valid and Binding Limited Obligations. Except as may be determined by *I Maga'lahen Guåhan* [the Governor] in accordance with this subsection (d), any bonds authorized by this Section shall constitute the valid and legally binding limited obligations of the government of Guam payable from and secured by a pledge of the revenues described in subsection (e) of this Section. Any notes authorized by this Section

may also be payable from and secured by a pledge of the proceeds of the bonds authorized by this Section. As determined by *I Maga'lahen Guåhan* [the Governor], any bonds authorized by this Section may constitute the valid and binding general obligations of the government of Guam. To the extent *I Maga'lahen Guåhan* [the Governor] makes such a determination (i) the government of Guam pledges its full faith and credit for the punctual payment of both principal of and interest on the bonds and covenants that there shall be collected annually in the same manner and at the same time as government revenue for other purposes is collected, such sum as is required to pay the principal of and interest on the bonds, (ii) such pledge shall be valid and binding from the time the pledge is made, and (iii) there are hereby appropriated from the General Fund such sums as will equal in each year the amount of money necessary to pay the principal and interest on such bonds. All officers charged by law with any duty in the collection of the revenues of the government from which debt service on the bonds will be payable shall do every lawful thing necessary to collect such sum. The validity of any such bonds shall not be affected by the validity or regularity of any proceedings for the payment of the General Fund expenses funded by the bonds.

(e) Source of and Security for Payment. Except as may be determined by *I Maga'lahen Guåhan* [the Governor] in accordance with subsection (d) of this Section, the bonds shall be made payable solely from, and shall be secured solely by a pledge of, any or all of the revenues derived by the government of Guam from taxes against persons on account of their businesses and other activities in Guam whether now or hereafter imposed or levied by the government pursuant to 11 GCA § 26201 or any other provision of law (collectively, the "Revenues") and shall not be payable from or secured by any other source or sources of revenue except as may be authorized by statute, except that the notes may also be payable from and secured by a pledge of the proceeds of the bonds. Any such pledge made hereunder shall be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the gov-

ernment of Guam or by any trustee, depository or custodian shall be deposited in a separate account and shall be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The indenture or certificate by which such pledge is created need not be recorded. Any such pledge may be made subordinate to the use of Revenues to pay existing general obligation debts of the government of Guam.

(f) Appropriation of Revenues. All Revenues are hereby appropriated for the purposes of paying the principal and interest on the bonds issued pursuant to this Section and the obligations incurred by the government pursuant to subsections (j) and (k) of this Section. Revenues released from the lien of the indenture or certificate pursuant to which the bonds are issued shall be available for appropriation by *I Liheslaturan Guåhan* [the Legislature] for any other lawful purpose.

(g) Additional Bonds. Nothing in this Section shall be construed to prevent the government of Guam from issuing, after appropriate enabling legislation, other obligations of the government secured by revenues on a parity with or subordinate to the bonds authorized by this Section on such terms as may be provided by the indenture or certificate pursuant to which the bonds are issued. Nothing in this Section shall be construed to prevent the government of Guam from issuing, after appropriate enabling legislation, other obligations of the government secured by the general obligation of the government on a parity with or subordinate to the bonds authorized by this Section on such terms as may be provided by the indenture or certificate pursuant to which the bonds are issued.

(h) Waiver of Immunity; Submission to Jurisdiction. Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government

of Guam waives immunity from any suit or action in contract on the bonds, but does not waive sovereign immunity as to the personal liability of elected officials and employees of the government of Guam. The government hereby submits to jurisdiction of the Federal District Court for the District of Guam for purposes of any such suit or action in contract on the bonds.

(i) No Personal Liability. No employee or elected official of the government of Guam shall be individually or personally liable for the payment of any amounts due on any bonds issued under this Section, or for any other liability arising in connection with the bonds; provided, however, that nothing in this Section shall relieve any employee or elected official from the performance of any ministerial duty required by law.

(j) Form of Bonds; Covenants; Appointment of Fiduciaries. The technical form and language of the bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability, cancellation and other terms or conditions not inconsistent with this Section, including covenants relating to the collection of revenues, shall be as specified in the certificate or indenture executed by the Governor, *I Maga'lahen Guåhan*, authorizing the issuance of the bonds. The certificate or indenture shall appoint one or more trustees, co-trustees or other fiduciaries authorized to receive and hold in trust the proceeds of the bonds and moneys relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the indenture. The Governor, *I Maga'lahen Guåhan*, is also authorized to execute, on behalf of the government of Guam, any appropriate agreements, certificates or other instruments relating to the bonds and the sale of bonds.

(k) Authorization for Credit Enhancement. The Governor, *I Maga'lahen Guåhan*, is authorized to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as he determines are necessary or desirable to improve the security and mar-

ketability of the bonds issued under this Section. Such contracts or agreements may contain an obligation to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances used to pay principal of or interest on the bonds and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance. Any such reimbursement obligation and any other obligations of the government under such contracts or agreements shall be payable solely from, and secured solely by a pledge of, revenues or in the case of any such obligations related to bonds determined by *I Maga'lahen Guåhan* to be general obligations of the government of Guam in accordance with subsection (d) of this Section, may be general obligations of the government of Guam as determined by *I Maga'lahen Guåhan*, and any such advance, if necessary, shall be treated for Organic Act purposes as creating an obligation issued to refund the bonds.

(l) Use of Proceeds from the Sale of the Bonds. The proceeds from the sale of the bonds shall be used to (i) to retire any previously issued notes authorized under Subsection (b) of this § 5112, (ii) pay the General Fund expenses described in subsection (m) of this § 5102 and which are otherwise appropriated by the Legislature, *I Liheslaturan Guåhan*, (iii) establish necessary reserves, (iv) pay expenses relating to the authorization, sale and issuance of the bonds, including, without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, financial advisory and accounting fees and charges, fees paid to banks or other financial institutions providing credit enhancement, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale and delivery of the bonds, and (v) fund capitalized interest on the bonds for a period ending not later than thirty (30) months.

(m) General Fund Expenses. The General Fund expenses authorized to be paid with the proceeds of the bonds are as follows:

(i) Income tax refund payments $139,200,000

2001 individual income tax refund $39,500,000; 2000 and prior years estimated individual income tax refund $2,700,000 and estimated corporate refund $25,000,000; 2002 estimated individual and corporate tax refund $72,000,000;

(ii) utility payments to Guam Power Authority $30,450,800

payments owed by Department of Education $15,284,200; payments owed by Department of Public Works $13,324,650; payments owed by Guam Memorial Hospital Authority $1,841,950*
(*denotes amounts to be offset against monies owed for the Medically Indigent Program to GMH);

(iii) retirement fund payments $25,285,057

payments owed by the General Fund for Supplemental Annuities $5,086,734; payments owed by the General Fund for retirement contributions for line agency employees $10,088,437; payments owed by the General Fund for retirement contributions for Guam Public School System $10,109,886;

(iv) withholding tax payments $15,398,763

2002 payroll obligations for line agencies

(v) General Fund Vendor payables thru 09/30/02 $5,263,609

payments owed by line agencies for vendor payables $2,519,750; payments owed by Department of Administration to MIP/Medicaid vendors $2,219,524; payments owed by the Guam Public School System for vendor payables $524,335;

(vi) public school repairs $2,711,628

Southern High School air-conditioning system replacement $1,000,000; Jose Rios

Middle School earthquake repair $164,000;
school repairs $1,547,628;

Total	$218,309,857

(vii) to fund an escrow to pay debt service on all or a portion of the Government of Guam General Obligation Bonds, 1993 Series A at a matched maturity.

(viii) The payments authorized in this subsection (m) shall, when paid, apply to any existing appropriation for the same items in the FY2003 or prior year Appropriations Acts, and shall not constitute double appropriations.

The net proceeds from the sale of the notes (after the payment of the items described in subsections (l) (iii) and (iv) of this Section and the funding of any capitalized interest on the notes) shall be used first, to make past due utility payments to the Guam Power Authority in an amount up to Ten Million Dollars ($10,000,000), second, to make income tax refund payments.

(n) Permitted Investments. The proceeds of the bonds, and any revenues relating to such bonds, may be invested in, but only in, the types of investments permitted by the certificate or indenture pursuant to which such bonds are issued.

(o) Approval by Guam Economic Development and Commerce Authority. 12 GCA § 50103(k), provides that agencies and instrumentalities of the government of Guam shall issue bonds and other obligations only by means of and through the agency of the Guam Economic Development and Commerce Authority ("GEDCA"). No issue of bonds authorized by this Section shall be sold until the board of directors of GEDCA has adopted a resolution approving the sale of such issue.

(p) Approval of Voters Not Required. Notwithstanding 17 GCA §§ 17311 and 17312, the issuance of the bonds authorized by this Section shall not be required to be subject to the approval of, or placed before, the voters of Guam.

Guam Code Ann. tit. 5, § 3102

There is within the Executive Branch of the government of Guam, a Department of Law. The Attorney General is head of the Department of Law and the Chief Legal Officer of the government of Guam. The Attorney General shall be appointed by the Governor with the advice and consent of the Legislature for a four year term under the conditions set forth in § 3 0101 of this Title.

Guam Code Ann. tit. 5, § 22601

All contracts shall, after approval of the Attorney General, be submitted to the Governor for his signature. All contracts of whatever nature shall be executed upon the approval of the Governor.

Guam Code Ann. tit. 5, § 30101

(a) The Department of Law of the government of Guam shall be administered by the Attorney General of Guam, who shall be elected by the people of Guam for a term of four (4) years.

(b) A candidate for the position of Attorney General of Guam shall declare no political party affiliation. Candidates for Attorney General of Guam shall be subject to the same campaign and personal financial reporting requirements as apply to candidates for *I Maga'lahen Guåhan* [the Governor], as well as all laws pertaining to campaign contributions. No nominating petition shall be required of a candidate for Attorney General of Guam.

A candidate for the position of Attorney General of Guam shall file candidacy with the Guam Election Commission in the manner similar to a candidate for *I Maga'lahen Guåhan* [the Governor], *except* as is *not* consistent with this Section. There shall be no Primary Election for the position of Attorney General of Guam. All qualified candidates complying with the provisions of this Section shall be placed on the General Election ballot. In the General Election, the

candidate receiving the most votes, subject to the qualifications established by this Chapter, shall be certified by the Guam Election Commission as having won election to the position Attorney General. The Attorney General shall be sworn into and take office on the first Monday of the January following the General Election at which the Attorney General was elected and shall remain in office until the election and swearing in of a new Attorney General, *unless* removed from Office as provided for in this Section. The Attorney General shall:

(1) be at least thirty-five (35) years of age;

(2) be a citizen of the United States and a resident of Guam;

(3) be an active member in good standing of the Guam Bar Association on Guam for at least five (5) years immediately preceding his or her candidacy for Office, or an inactive member of the Guam Bar Association who, in the five (5) years preceding his election as an Attorney General has served as an elected official elected by the people of Guam or as a Public Auditor of Guam, or as a Justice of the Supreme Court of Guam or Judge of the Superior Court of Guam;

(4) not have been convicted of a felony; *and*

(5) not have been suspended from the practice of law in any jurisdiction for violation of ethical rules governing the practice of attorneys.

(c) The Attorney General of Guam may be removed in the same manner as provided under the Organic Act of Guam for the removal of *I Maga'lahen Guåhan* [the Governor]. As provided in the Organic Act of Guam, a vacancy in the position of Attorney General shall be filled:

(1) by appointment by *I Maga'lahen Guåhan* [the Governor] if such vacancy occurs less than six (6) months before a General Election for the Office of the Attorney General of Guam; ~~or~~

(2) by a special election held no sooner than three (3) months after such vacancy occurs, and no later than six (6) months before a general election for Attorney General of

Guam, and by appointment by *I Maga'lahen Guâhan* [the Governor] pending a special election under this Subparagraph.

Guam Code Ann. tit. 7, § 3103(a)

(a) The Supreme Court of Guam is established pursuant to 22A of the Organic Act of Guam and has such original and appellate jurisdiction as is prescribed by the Organic Act of Guam and by this Title. The Supreme Court shall consist of three (3) full-time Justices who shall be appointed by *I Maga'lahen Guâhan*, the Governor of Guam, subject to the advice and consent of *I Liheslatura*. Two (2) of the full-time Justices shall be Associate Justices and one (1) shall be Chief Justice, who shall be selected as provided herein.

Guam Code Ann. tit. 7, § 4104

The Governor, in writing, or the Guam Legislature, by resolution, may request declaratory judgments from the Supreme Court as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of the Governor and the operation of the Executive Branch, or the Guam Legislature, respectively. The declaratory judgments may be issued only where it is a matter of great public interest and the normal process of law would cause undue delay. Such declaratory judgments shall not be available to private parties. The Supreme Court shall, pursuant to its rules and procedure, permit interested parties to be heard on the questions presented and shall render its written judgment thereon. Upon a writing, or resolution in the case of the Guam Legislature, by the party submitting the request for the declaratory judgment that the party wishes the Supreme Court to dismiss its petition for declaratory judgment, the Supreme Court shall no longer have jurisdiction and shall dismiss without prejudice the declaratory judgment case, provided that the request is filed with

the Supreme Court at any time before the Court renders its written decision.

Guam Code Ann. tit. 7, § 6101(a)

(a) Each Justice of the Supreme Court shall hold office for a term ending the 31st day of January following the first general election held after the expiration of ten (10) years since his or her appointment or election to office.

Guam Code Ann. tit. 11, § 24102

Unless the context otherwise requires, the following provisions shall govern the construction of this Chapter:

(a) *Property* means land and improvements on land;

(b) *Assessee* means the person to whom the property or a tax is assessed;

(c) *Lien* date means the time when taxes for any year become a lien on the property; this is noon on the first Monday in March in the year of assessment;

(d) *Tax deeded property* means property which has been sold to the government for taxes;

(e) *Tax sold property* means real property which has been sold to the government by operation of law for taxes and from which the lien of such taxes has not been removed;

(f) *Value, full cash value*, and *cash value* mean thirty-five per cent (35%) of the appraised value; *appraised value* means the amount at which property would be taken in payment of a just debt from a solvent debtor.

(g) The term *roll* shall mean and include any schedule of assessments on property subject to the payment of tax levied by this Chapter;

(h) *Property* shall be described for tax purposes in any manner sufficient to identify it: in the assessment, advertisement and sale of property for taxes, any abbreviations may be used if an explanation thereof appears on each page

of the roll, or in the front of each book of the roll, or if they are explained in the document in which they appear;

(i) If any act is required to be performed by this Chapter on or before a certain date and the date falls on a Sunday or holiday, the act may be performed on the next business day following with the same effect as if performed on the specified date;

(j) No act in any of the proceedings for raising revenue by taxation is illegal by reason of informality or because not completed within the required time;

(k) *Board* means Board of Equalization.

(l) *Aggregate tax valuation.* In the event that certification of the aggregate tax valuation of the property in Guam, as set forth in § 11 of the Guam Organic Act (48 U.S.C. § 1423a), is required, then the aggregate tax valuation of the property in Guam shall be certified as being one hundred percent (100%) of the appraised value of the property on Guam based on the last completed valuation conducted pursuant to 11 GCA § 24306, as supplemented by the annual adjustments provided for in 11 GCA § 24307. **[This subsection added by Pub. L. No. 27-21]**

Guam Code Ann. tit. 11, § 24306

For the calendar year 1977, the valuation of all property shall be the 1978 valuation as shown on the assessment roll of the government for 1976, provided, however, that in instances where property has been either improved or suffered loss in 1977, the assessor shall take into consideration such improvement or loss and adjust the assessment roll for such property accordingly. Commencing with the first Monday in March of 1978 and continuing every three (3) years thereafter, the assessor shall reascertain the value of all property in Guam and such valuation shall be used as the basis for assessment during the annual adjustments for property which has been either improved or suffered loss, as provided by § 24307. Notwithstanding any other provision of law, if the valuation provided for in this § 24306 is not

reascertained every three (3) years as required by this Section, then the last completed valuation as supplemented by the annual adjustments provided for in § 24307 shall be the property tax valuation used under this Chapter.

Guam Code Ann. tit. 11, § 24307

In each year other than the year of the triennial valuation the assessor shall ascertain the value of all property as of the first Monday in March which shall have become taxable since the last valuation, including new improvements or additions to old improvements, or which shall change in value because of a change in use; and in case of the destruction or injury by fire, flood, typhoon, storm or otherwise, or removal of any improvements of any kind, or of orchards, timber, or ornamental trees, the value of which shall have been included in the former valuation of the property, the assessor shall determine the value of such loss and reduce the valuation accordingly.

Guam Code Ann. tit. 11, § 24401

The following property is exempt from real property taxes and shall not be assessed:

(a) All property title to which is in the United States or the government of Guam;

(b) All property which is being used for public roads or easements;

(c) All property used exclusively for educational, religious, or other eleemosynary purposes;

(d) Property included in any cemetery in use as such and not conducted for profit.

(e) Property upon which the provisions of 21 GCA § 61504 prohibit the construction of buildings.

(f) Property use in active farming for at least eight (8) months in any tax year.

APPENDIX F

ORGANIC ACT OF THE VIRGIN ISLANDS (excerpts)

48 U.S.C. § 1401a

For the calendar year 1936 and for all succeeding years all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property and the rate in each municipality of such islands shall be the same for all real property subject to taxation in such municipality whether or not such property is in cultivation and regardless of the use to which such property is put.

48 U.S.C. § 1403

To construct, improve, extend, better, repair, reconstruct, acquire, and operate any and all types of public works which shall include, but not be limited to, streets, bridges, wharves, and harbor facilities, sewers and sewage-disposal plants, municipal buildings, schools, libraries, gymnasia and athletic fields, fire houses, electric distribution systems or other work pertaining to electric systems, and other public utilities, including those owned or operated by the Saint Thomas Power Authority, or to clear slums, accomplish urban redevelopment or provide low-rent housing, negotiable general obligation bonds and other obligations may be issued by the government of the Virgin Islands or any municipality thereof: *Provided*, That no public indebtedness of any municipality thereof shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in such municipality and that no public indebtedness of the government of the Virgin Islands shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in the islands. Bonds issued pursuant to sections 1403 to 1403b of this title shall bear such date or dates, may be in such denominations, may mature in such amounts and at such time or times, not ex-

ceeding thirty years from the date thereof, may be payable at such place or places, may be sold at either public or private sale, may be redeemable (either with or without premium) or nonredeemable, may carry such registration privileges as to either principal and interest, or principal only, and may be executed by such officers and in such manner, as shall be prescribed by the government of the Virgin Islands or of the municipality issuing the bonds. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signature, whether manual or facsimile, shall, nevertheless, be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. The bonds so issued shall bear interest at a rate not to exceed 4 per centum per annum, payable semiannually. All such bonds shall be sold for not less than the principal amount thereof plus accrued interest. All bonds issued by the government of the Virgin Islands or any municipality thereof, including specifically interest thereon, shall be exempt from taxation by the Government of the United States, or by the government of the Virgin Islands or any political subdivision thereof, or by any State, Territory, or possession or by any political subdivision of any State, Territory, or possession, or by the District of Columbia: *Provided further*, That the government of the Virgin Islands and any municipality thereof shall be obliged to levy and collect sufficient taxes for servicing any of the outstanding bonds, even if such taxation is required at a rate in excess of or in addition to the tax or tax rate of 1.25 per centum of the assessed value which is provided for in section 1401b of this title.

48 U.S.C. § 1574(b)(ii)(A)

(b) Government bonds; maximum amount; sale, interest, etc.

* * *

(ii)(A) Subject to the provisions of this paragraph (ii), the legislature of the government of the Virgin Islands may cause to be issued such negotiable general obligation bonds

or other evidence of indebtedness, including but not limited to notes in anticipation of the collection of taxes or revenues, as it may deem necessary and advisable for any public purpose authorized by the legislature: *Provided*, That no such indebtedness of the Virgin Islands shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in the Virgin Islands. Bonds issued pursuant to this paragraph (ii) shall bear such date or dates, may be in such denominations, may mature in such amounts and at such time or times, not exceeding thirty years from the date thereof, may be payable at such place or places, may be sold at either public or private sale, may be redeemable (either with or without premium) or nonredeemable, may carry such registration privileges as to either principal and interest, or principal only, and may be executed by such officers and in such manner, as shall be prescribed by the legislature of the government of the Virgin Islands. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signature, whether manual or facsimile, shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. The bonds so issued shall bear interest at a rate not to exceed that specified by the legislature. All bonds issued by the government of the Virgin Islands, including specifically interest thereon, shall be exempt from taxation by the Government of the United States, or by the government of the Virgin Islands or any political subdivision thereof, or by any State, territory, or possession or by any political subdivision of any State, territory, or possession, or by the District of Columbia.